

**SUPREME COURT OF THE UNITED STATES**

**NOTICE OF HEARING** **1933**

**No. 211**

**THE OKLAHOMA & GULF RAILROAD COM-  
PANY AND THE CHICAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY, APPELLANTS,**

**E. W. MACKAY, AS COUNTY TREASURER OF HUGHES  
COUNTY, OKLAHOMA; THE CITY OF HOLDENVILLE  
ET AL.**

**APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.**

**FILED NOVEMBER 14, 1933**

**(37,406)**

(27,404)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 649.

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY AND THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, APPELLANTS,

*vs.*

B. W. MACKEY, AS COUNTY TREASURER OF HUGHES COUNTY, OKLAHOMA; THE CITY OF HOLDENVILLE  
*ET AL.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.

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Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1919, of said Court, before the Honorable William C. Hook and the Honorable John E. Carland, Circuit Judges, and the Honorable Charles F. Amidon, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,

*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the twenty-second day of July, A. D. 1918, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, et al., were Appellants, and The Choctaw, Oklahoma & Gulf Railroad Company, et al., were Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:





IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA.

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PLEAS AND PROCEEDINGS BEFORE THE HONORABLE RALPH E.  
CAMPBELL, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOL-  
LOWING ENTITLED CAUSE:

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COM-  
PANY and THE CHICAGO, ROCK ISLAND & PACIFIC  
RAILWAY COMPANY, - - - - - *Complainants,*

Equity

*vs.*

No. 1913

B. W. MACKEY, as County Treasurer of Hughes County,  
Oklahoma, THE CITY OF HOLDENVILLE, a Municipal  
Corporation, and CEELAN M. SPITZER, ADELBERT L.  
SPITZER, HORTON C. RORICK and CARL B. SPITZER,  
Partners in Trade, Doing Business Under and in the Name  
of SPITZER, RORICK & COMPANY, - - *Defendants.*

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B. W. MACKEY, as County Treasurer of Hughes County,  
Oklahoma, THE CITY OF HOLDENVILLE, a Municipal  
Corporation, and HORTON C. RORICK, ADELBERT L.  
SPITZER and CARL B. SPITZER, Partners in Trade,  
Doing Business Under the Firm Name and Style of  
SPITZER, RORICK & COMPANY, and MADISON G.  
BALDWIN, - - - - - *Appellants,*

*vs.*

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COM-  
PANY, a Corporation, and THE CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY, a Cor-  
poration, - - - - - *Appellees.*

*In the District Court of the United States Within and For the Eastern District of the State of Oklahoma. The Choctaw, Oklahoma & Gulf Railroad Company and The Chicago, Rock Island & Pacific Railway Company, Complainants, v. B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, the City of Holdenville, a Municipal Corporation, and Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer, Partners in Trade, Doing Business Under and in the Name of Spitzer, Rorick & Company, Defendants. --In Equity, No. 1913.*

### **Bill of Complaint.**

*To the Honorable, the District Court of the United States, within and for the Eastern District of the State of Oklahoma:*

Your Orators, The Choctaw, Oklahoma & Gulf Railroad Company, a corporation organized and existing under, by and in pursuance of an Act of the Congress of the United States, and The Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa, and a citizen and resident of the States of Illinois and Iowa, having its principal office and place of business at the City of Chicago, in said State of Illinois, brings this, its Bill of Complaint, against B. W. Mackey as County Treasurer of Hughes County, State of Oklahoma, who is a resident and citizen of said Hughes County, Oklahoma, in said Eastern District of Oklahoma, and the City of Holdenville, a municipal corporation of the first class, organized and existing under the laws of the State of Oklahoma, located in Hughes County, Oklahoma, in said Eastern District of Oklahoma, and Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer, partners in trade under and in the name of Spitzer, Rorick & Company, who are citizens and residents of the City of Toledo, ..... County, State of Ohio, and thereupon complains and says:

#### **First:**

Your Orators aver that The Choctaw, Oklahoma & Gulf Railroad Company is now and was at all the times hereinafter mentioned, and for many years heretofore has been, a corporation organized and existing under, by and in pursuance of an Act of the Congress of the United States, as will be hereinafter more fully set out, and is a non-resident and is not a citizen of the said State of Oklahoma; that The Chicago, Rock Island and Pacific Railway Company is now and was at all the times hereinafter mentioned, and for many years hereto-

fore has been, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa, and a resident and citizen of the States of Illinois and Iowa, having its principal place of business at the City of Chicago, in said State of Illinois and is not a resident or citizen of the State of Oklahoma; that the defendant B. W. Mackey is the duly elected, qualified and acting County Treasurer of Hughes County, State of Oklahoma, and a resident and citizen of said Hughes County, Oklahoma, in said Eastern District of Oklahoma; that the defendant the City of Holdenville is a municipal corporation of the first class, organized and existing under the laws of the State of Oklahoma and is located in Hughes County, Oklahoma, in said Eastern District of Oklahoma; that the defendants Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer are citizens of the State of Ohio and residents of the City of Toledo, County of ..... in said State.

#### Second:

Your Orators further aver that this suit is an action of a civil nature; that the matter in dispute herein exceeds, exclusive of interest and costs, the sum and value of Three Thousand Dollars (\$3,000.00), and that the controversy herein is a controversy wholly between citizens of different states and a corporation organized and existing under and by virtue of an Act of Congress.

#### Third:

Your Orators further aver that on the 28th day of November, 1887, there was organized under and pursuant to the laws of the State of Minnesota, a corporation called the Choctaw Coal and Railway Company, which was empowered, among other things, to mine, sell, market and deal in coal, iron and other ore and the products thereof, to manufacture coke, charcoal, pig iron and various other metals; to buy, lease, deal in and work mineral lands, and to build, acquire, maintain and operate roads, ways and railroads necessary or useful in the operation or development of any mine or quarry owned or operated by it, as more fully appears from copies of the charter of said corporation and amendments thereto, hereto attached and marked "Exhibit A," and hereby made a part hereof as fully as if set forth herein, and as further appears from the laws of said State of Minnesota, under and pursuant to which said corporation was organized.

#### Fourth:

That by an Act of Congress approved on to-wit, February 18, 1888, the Choctaw Coal and Railway Company aforesaid

was empowered and authorized to construct and maintain a railway, telegraph and telephone line through what was then Indian Territory, from a point on the Red River, at or near the bluff known as Rock Cliff on the southern boundary of said Territory and running thence by the most feasible and practicable route through said Territory to a point on the eastern line contiguous to the west boundary line of Polk and Sevier Counties in the State of Arkansas, and also to construct and maintain a branch line of railway to extend from some suitable point on the above line of railway in a northwesterly direction to the leased coal veins of said Choctaw Coal and Railway Company, situated in what was then Tobucksey County, Choctaw Nation, and from thence by some practicable route to the intersection with the Atchison, Topeka and Santa Fe Railway between Halifax station and Bear Creek, otherwise known as the North Fork of the Canadian River, all as more fully appears from said Act of Congress and an amendment thereof, approved February 13, 1889.

#### Fifth:

That pursuant to its charter and the foregoing Acts of Congress, the Choctaw Coal and Railway Company proceeded to develop coal mines upon the leases aforesaid and to construct a railway line connecting therewith for the transportation of the products of said mines; that in the prosecution of its said work said corporation became insolvent and it became necessary for the United States Government to make some provision for the work undertaken by it to be carried on, in order that the leased mines might be operated for the benefit of the Indians as wards of the United States and for the purpose of the development of commerce in the said Territories and among the several States of the Union; that to accomplish said purposes and to secure the operation of said mines for the benefit of the Indians and in the interests of interstate commerce, the United States government, by an Act approved by Congress on to-wit, August 24, 1894, empowered the purchasers of the rights-of-way, railroads, mines, coal leasehold estates, and other property and the franchises of the Choctaw Coal and Railway Company, at any sale made under or pursuant to any decree of court, to form a corporation, and vested in said corporation formed all the right, title, interest, property, possession and claim and demand in law and equity thereof, in and to such rights-of-way, railroads, mines, coal leasehold estates, and property of said Choctaw Coal and Railway Company, together with all the franchises which had been conferred upon said company by any and all Acts of Congress, or which it possessed by virtue of its char-

ter under the laws of the State of Minnesota, all as more fully appears from said Acts of Congress last aforesaid; that pursuant to said last-named Acts of Congress there was organized the complaining corporation the Choctaw, Oklahoma and Gulf Railroad Company; that Section four of the Act last aforesaid (here set out for the convenience of the court) is in words and figures as follows:

"Section 4: That it shall and may be lawful for such new corporation to construct and operate branches from its said railroad and for such purpose to take and use rights-of-way not exceeding one hundred feet in width, upon making compensation therefor as provided for in the case of taking land for its main line, and to lease its railroads and mines and other property to any company owning or operating a railroad connecting with the railroad of said new corporation, on such terms and conditions as may be agreed upon, *provided*, that the right to construct branches, conferred by this section, shall exist and be exercised in the Indian Territory only for the purpose of developing and working the leases mentioned in the Act of Congress of October first, eighteen hundred and ninety."

#### Sixth.

That the United States Government, by an Act of Congress approved on to-wit, April 24th, 1896, duly recognized the Choctaw, Oklahoma and Gulf Railroad Company, pursuant to the Act approved August 24th, 1894, and further defined and prescribed the rights, powers and duties thereof. Section two of said Act of April 24th, 1896 (here copied for the convenience of the court) is in words and figures as follows:

"Section Two: That the powers conferred by said section four shall extend to branches intended to aid the development of any coal or timber territory contiguous or tributary to the lines of the railroad of the said Choctaw, Oklahoma and Gulf Railroad Company, whether owned or controlled by said company or by others, said branches not to exceed in length five miles, and to the construction and operation of a branch from any point on its existing line of railway to the northern line of the State of Texas, and for this purpose the said company shall have the like rights, powers and franchises, as to the acquisition of a right-of-way and depot grounds, and as to the construction and operation of said branch, and shall be subject to the like conditions and restrictions as it possesses or is subject to under or by virtue of the provisions of the said

Act of August twenty-fourth, eighteen hundred and ninety-four, as to the line of railroad acquired or constructed thereunder."

Seventh:

That pursuant to and in accordance with the Acts of Congress described, the Choctaw, Oklahoma and Gulf Railroad Company purchased and became possessed of and vested with all the right, title, interest, property, possession, claim and demand in law and equity, in and to such rights-of-way, railroads, mines, coal leasehold estates, and with all the rights, powers, immunities, privileges and franchises which had been heretofore granted to said Choctaw Coal and Railway Company, or conferred upon it by any Act of Congress, or which it possessed by virtue of its charter under the laws of the State of Minnesota; and that said Choctaw, Oklahoma and Gulf Railroad Company became possessed of and vested with, in addition to all of the foregoing, such further and additional franchises and rights as were granted to it by the aforesaid Acts of Congress authorizing its organization, as more fully appears therefrom.

Eighth:

That prior to March 24, 1904, the Choctaw, Oklahoma and Gulf Railroad Company, pursuant to and in accordance with its rights, powers, privileges and duties under and by virtue of its charter and the various Acts of Congress heretofore referred to proceeded to construct and acquire and to become possessed of and did construct and acquire and become possessed of the following line of railroad:

A line of railway extending from a point on the west bank of the Mississippi River at or near Hopefield, Crittenden County, Arkansas, opposite Memphis, Tennessee, by way of Little Rock, Pulaski County, Arkansas, to a point on the boundary line between the Territory of Oklahoma and the State of Texas, at or near Texola, Greer County, Oklahoma.

Ninth:

That pursuant to and in accordance with its rights, powers, privileges and duties and by virtue of its charter and the various Acts of Congress, the said Choctaw, Oklahoma and Gulf Railroad Company did locate its said railway from the said leased coal veins of said Choctaw Coal and Railway Company to an intersection with the Atchison, Topeka and Santa Fe Railway, as provided in said Act of Congress of February 18, 1888, and did file its maps and do all things by law required to acquire a right-of-way and station grounds



therefor; that as a part of such right-of-way and station grounds the said Choctaw, Oklahoma and Gulf Railroad Company was granted, under the terms and by virtue of the said Acts of Congress, the following described tract of land, to-wit:

Beginning at a point three hundred two and five-tenths (302.5) feet Northeasterly from the intersection of the main track of said railway company with the West line of Section eighteen (18) Township seven (7) North, Range nine (9) East, measured along said main track; thence Northeasterly at right angles one hundred and fifty (150) feet; thence Southeasterly at right angles parallel to and one hundred and fifty (150) feet easterly from the center of said main track; three thousand feet (3,000); thence Southwesterly at right angles three hundred (300) feet; thence Northwesterly at right angles, parallel to and one hundred and fifty (150) feet westerly from the center of said *mine* track, three thousand (3,000) feet; thence Northeasterly, at right angles one hundred and fifty (150) feet to the point of beginning, lying and being in Section thirteen (13), Township seven (7) North, Range eight (8) East, and Section eighteen (18), Township seven (7) North, Range nine (9) East, Hughes County, Oklahoma.

Tenth:

That under and in pursuance of said Acts of Congress, your Orator, The Choctaw, Oklahoma and Gulf Railroad Company, was vested with an estate in and to the said described premises, and became and was entitled to the full and free possession and use of said premises for the purposes in said Act of Congress provided.

Eleventh:

That on to-wit, March 24, A. D. 1904, The Choctaw, Oklahoma and Gulf Railroad Company, being thereunto duly authorized by an Act of Congress, leased to your Orator, The Chicago, Rock Island & Pacific Railway Company, all its railway lines and appurtenances thereto, including the premises hereinbefore particularly described, and equipment thereof, for a period of 999 years; that your Orator, The Chicago, Rock Island and Pacific Railway Company, under the several Acts of Congress, and by virtue of its chartered rights and the laws of the States of Illinois and Iowa, under which it is incorporated, had full power, right and authority to acquire and hold, by lease, said railway lines as well as to construct, acquire, own, build and operate all the other lines which it now owns and operates within the State of Oklahoma.



That your Orator, the Chicago, Rock Island and Pacific Railway Company, under and by the terms of said lease succeeded to all the rights, powers, facilities, franchises, properties and interests of the said Choctaw, Oklahoma & Gulf Railroad Company in and to said railway lines and became entitled to the full and free use and possession of the said railway lines, properties and rights-of-way, including the premises hereinbefore particularly described, for the full period of said lease.

Twelfth:

That your Orators have constructed and do now maintain on and upon the said rights-of-way and on and upon the premises herein described, railway tracks, both main and sidings, composed of ballast, ties and steel, station houses, freight depots and other necessary appurtenances, which are in constant use in the performance of the charter powers of your Orators.

Thirteenth:

That the premises hereinbefore described, or a portion thereof, are contiguous to and abut upon, at the north and east side thereof, on Oklahoma Avenue, a street or thoroughfare of the defendant, the City of Holdenville.

Fourteenth:

That the defendant, The City of Holdenville, and under and by virtue of an Act of the Legislature of the State of Oklahoma, entitled "An Act to provide for the improvement of streets and other public places within cities of the first class, by grading, paving, macadamizing, curbing, guttering and draining the same, and declaring an emergency," approved April 17, 1908, as amended by an Act of said Legislature, approved ..... 1909, and acting by and through its Mayor and Councilmen, did on the 20th day of January, 1910, adopt a certain resolution, numbered 20, declaring it necessary to pave, grade, drain and curb certain streets of the said city, including a portion of said Oklahoma Avenue, to-wit: "From the intersection of the Frisco and Rock Island right-of-way at the Union Station, to the south-east side of Oak Street," and directing a publication thereof in a newspaper of general circulation for a period of two weeks, and on, to-wit, the 7th day of April, 1910, the said city, acting by and through its said Mayor and Councilmen, did adopt a resolution numbered 23, reciting the publication of said Resolution No. 20, and providing for the pavement of said streets, including the following: "Oklahoma Avenue from the intersection of the Frisco and Rock Island right-of-ways

at the Union Station to the southeast line of Oak Street to be paved thirty feet wide from the face of the curb to the face of the curb," and prescribing the kind of pavement to be used and providing for the reception of bids therefor; and thereafter, and on to-wit, the 2nd day of May, 1910, the said City of Holdenville, by and through its Mayor and Councilmen did receive bids for the construction of said aforesaid pavements and improvements, and on said date did by motion duly made and carried accept the bid of The Shelby-Downard Asphalt Company, of Ardmore, Oklahoma, and authorize the Mayor and Clerk to enter into a contract in accordance with such bid; and thereafter and on, to-wit, the 11th day of May, 1910, did approve and authorize the execution of a certain contract between said City of Holdenville and The Shelby-Downard Asphalt Company covering the said pavements and improvements, and thereafter the said pavements were laid and improvements made.

#### Fifteenth:

That on, to-wit, the 29th day of June, 1910, the Mayor and Councilmen of the defendant, City of Holdenville, did meet in called session, pursuant to a request and call for a council meeting, as follows, to-wit: "Request for Council Meeting: To F. P. Rutherford, Mayor, City of Holdenville: We, the undersigned Councilmen of the City of Holdenville, Oklahoma, do hereby request you to call a special meeting of the City Council of said city at the council rooms of said city at 5:00 P. M., on the 29th day of June, 1910, said meeting to be held for the purpose of appointing a board of appraisers to appraise and apportion the benefits of the several lots and tracts of land in paving district No. 1, adopting map showing the subdivision of the C., R. I. & P. R. R. property; and accepting the estimate of the City Engineer as to the cost of improvements in paving district No. 1. (Signed) J. J. Pickens, H. C. Hyde, J. L. Adams, Councilmen."

#### "Call for Meeting.

I, F. P. Rutherford, Mayor of the City of Holdenville, Oklahoma, by virtue of the authority vested in me and pursuant to the above request do hereby call a meeting of the City Council of the City of Holdenville to be held at the time, place and for the purpose as expressed in the above request.

(Signed) F. P. Rutherford,  
Attest I. A. Draper, Clerk."

The said notice was duly served upon the members of said council and at said meeting, the following, among other

proceedings, were had, as appears from the recorded minutes of said meeting:

"City Engineer McIntosh presented a map showing the C., R. I. & P. R. R. property to be adopted for the purpose of adopting the property in quarter blocks for the purpose of assessing the benefits for paving purposes.

"Moved by Reese, seconded by Adams, that the map submitted by the City Engineer be adopted.

"Upon a vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Bailey, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Cornish, Nix.

"Motion declared carried and map adopted."

"Resolution No. 25 was presented by the Ordinance Committee and was read by the clerk as follows:

"Resolution No. 25:

Appointing a board of appraisers to appraise and apportion to the several lots and tracts of land in Street Improvement District Number One the benefits resulting from the improvement of the streets constituting said Improvement District in the City of Holdenville, Oklahoma.

Whereas, in pursuance of a resolution adopted on the 20th day of January, A. D. 1910, and other proceedings duly had and taken according to law, a contract has been entered into for the improvement of the following named streets, to-wit:

1. That portion of Oklahoma Avenue from the intersection of the St. Louis and San Francisco Railway right-of-way and the right-of-way of the Rock Island Railroad at the Union Station to the southeast side of Oak Street.

\* \* \* \* \*

Whereas, the total cost of the improvements and the several parts thereof has been ascertained and determined as hereinafter set forth:

Therefore, be it resolved by the Mayor and Councilmen of the City of Holdenville, Oklahoma:

Section 1. That said described portion of Oklahoma Avenue, Oak Street, Cedar Street, Creek Street, Echo Street, Sixth Street, Seventh Street, and the lots and tracts of land to be assessed to pay the cost of said improvements as hereinafter provided, shall constitute Street Improvement District No. One of the City of Holdenville, Oklahoma.

Section 2. That E. F. Messenger, C. E. Arnold and H. G. Barnard, who are disinterested freeholders of the City

of Holdenville, Oklahoma, and not owners of any property to be assessed for said improvements, be and they are hereby appointed a Board of Appraisers to appraise and apportion the benefits resulting from said improvements to the several lots and tracts of land within said Improvement District Number One.

Section 3. That the cost of improving that part of Oklahoma Avenue extending from the intersection of the St. Louis and San Francisco and Rock Island right-of-way at the Union Station to the southeast side of Oak Street, exclusive of the area formed by street intersections and alley crossings, in the aggregate amount of Ten Thousand Six Hundred and Eighty-six Dollars and Seventy Cents shall be assessed against the several lots and tracts of land embraced in Blocks 34, 33½, 44½, 53, 52½, 68, 68½, 79, 78½, including the right-of-way of the Rock Island Railway abutting on said street and which has been platted into quarter blocks districts for the purpose of the appraisalment and assessment as herein provided.

All of which is abutting on said portion of Oklahoma Avenue.

"Section 4. That the cost of improving the area formed by the intersection of Oklahoma Avenue with Echo Street in the aggregate amount of Nine Hundred and Eighty-four Dollars and Thirty-four cents shall be assessed against the lots and tracts of land within the four quarter blocks adjacent thereto.

"Section 5. (Same as Section 4, except relates to intersection of Oklahoma Avenue with Creek Street, aggregating the amount of One Thousand One Hundred Eighty-two Dollars and Forty-six Cents.)

"Section 6. (Same as Section 4, except relates to intersection of Oklahoma Avenue with Cedar Street, aggregating the amount of One Thousand Two Hundred Forty-three Dollars and Eight Cents.)

"Section 7. (Same as Section 4, except relates to intersection of Oklahoma Avenue with Oak Street, aggregating the amount of One Thousand Two Hundred Thirty-one Dollars and Seventy-five Cents.)

\* \* \* \* \*

"Section 42: That said appraisers shall subscribe the oath prescribed by law and take such steps as may be necessary to make such assessment and appraisalment as is by law required."

The said resolution was duly adopted and the clerk instructed to notify the appraisers of their appointment.

And thereafter, on, to-wit, July 8, 1910, the said Mayor and Councilmen of the City of Holdenville, met in adjourned session, at which the following, among other proceedings, were had, as appears from the recorded minutes of said meeting:

"The appraisers appointed to appraise and apportion to the several lots and tracts of land the benefits in improvement District No. 1, submitted the following report, which was read by the clerk, as follows:

Report of Appraisers.

Oath of Appraisers.

Street Improvement District Number One in the City of Holdenville, Oklahoma.

State of Oklahoma, County of Hughes.—ss.

E. F. Messenger, C. E. Arnold and H. G. Barnard having been appointed a Board of Appraisers by resolution of the Mayor and Councilmen of the City of Holdenville, Oklahoma, on the 29th day of June, A. D. 1910, to appraise and apportion to the several lots and tracts of land chargeable with the cost thereof, the benefits resulting thereto on account of paving and otherwise improving the streets included in said Improvement District Number One in the City of Holdenville, Oklahoma, in accordance with the resolution appointing the said appraisers, being first duly sworn, each for himself, deposes and says that he is a disinterested freeholder of said City of Holdenville, Oklahoma, and not the owner of any property to be assessed for the making of said improvements, and that he will make true and impartial appraisalment and apportionment of the benefits *accuring* to the several lots and tracts of land chargeable with the cost of making said improvements, and that he will make written report thereof and file the same with the City Clerk of said City as required by law and the provisions of said resolution.

(Signed) E. F. Messenger,  
C. E. Arnold,  
H. G. Barnard.

Subscribed and sworn to before me this the 2nd day of July, A. D. 1910.

(Seal)

Ira A. Draper,  
Notary Public.

My Commission expires December 10, 1911.

July 8th, 1910.

To the Honorable Mayor and Councilmen of the City of Holdenville, Oklahoma:

Greeting:

We, the undersigned Board of Appraisers appointed by

resolution of your Honorable Body to appraise and apportion to the several lots and tracts of land chargeable with the cost thereof, the benefits resulting thereto on account of grading, paving, curbing, guttering, and otherwise improving the portions of Oklahoma Avenue from the intersection of the St. Louis and San Francisco Railway right-of-way and the Rock Island Railroad at the Union Station extending to the southeast side of Oak Street.

Also that portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street.

Also Cedar Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street.

Also Echo Street beginning on Oklahoma Avenue and extending to the northeast side of Sixth Street.

Sixth Street beginning on the southeast side of Echo Street and extending to the northwest side of Oak Street.

Also Seventh Street, beginning on the southeast side of Creek Street and extending to the northwest side of Oak Street, exclusive of intersection of Cedar Street.

Also Sixth Street from the southeast side of Oak Street to the northwest side of Gulf Street.

Do hereby certify that we met in the City Hall in the City Engineer's Office, in the City of Holdenville, on the second day of July, 1910, and organized as a Board of Appraisers, and selected E. F. Messenger, as chairman, and H. G. Barnard as clerk thereof. That we at said time severally took and subscribed an oath to make a true and impartial appraisal and apportionment to the several lots and tracts of land designated in the resolution by which we were appointed, and of the benefits resulting thereto, as aforesaid; that within five days after being notified of our appointment, we proceeded to appraise and apportion to said several lots and tracts of land the benefits resulting thereto on account of the making of said improvements; that in making said appraisal and apportionment, we first apportioned to each quarter block its due proportionate charge according to the amount and of work performed upon the abutting streets and other public places, including street intersections and alley crossings, which respective amounts appraised, apportioned and adopted, we find just, equitable and accurate, and that the several respective quarter blocks are benefited to the extent of the respective amounts so apportioned; that after such division in quarter block districts we appraised and apportioned to the several lots and tracts of land therein, the respective amounts set opposite the description of said lots and tracts of land contained in the statement attached here-



to, marked Exhibit 'A' and made a part hereof, which respective amounts we find equitable and just according to the benefits *accruing* to said several lots and tracts of land, on the 7th day of July, 1910, we completed our duties as such Board of Appraisers and submit this our report and file same with the City Clerk of the City of Holdenville, Oklahoma, dated this 8th day of July, A. D. 1910.

(Signed) E. F. Messenger,  
Chairman,  
H. G. Barnard,  
Secretary.  
C. E. Arnold.

'Exhibit A.'

East $\frac{1}{4}$ Block of Block 68 $\frac{1}{2}$	\$1107.18
North $\frac{1}{4}$ Block of Block 68 $\frac{1}{2}$	1110.01
East $\frac{1}{4}$ Block of Block 78 $\frac{1}{2}$	307.94
East $\frac{1}{4}$ Blk. of Blk. 52 $\frac{1}{2}$	\$1047.23
North $\frac{1}{4}$ Blk. of Blk. 52 $\frac{1}{2}$	1032.08
East $\frac{1}{4}$ Blk. of Blk. 44 $\frac{1}{2}$	1023.17
North $\frac{1}{4}$ Blk. of Blk. 44 $\frac{1}{2}$	973.64
East $\frac{1}{4}$ Blk. of Blk. 33 $\frac{1}{2}$	706.48
North $\frac{1}{4}$ Blk. of Blk. 33 $\frac{1}{2}$	285.81'

A motion by Taylor, second by Nix, that the report of appraisers be received and publication of same ordered was duly carried.

Thereafter, on to-wit, July 15, 1910, at a meeting of said Mayor and Councilmen of said City of Holdenville, the following, among other proceedings, were had, as appears from the recorded minutes of said meeting:

"The Clerk submitted the following notice of meeting:

Notice of Meeting.

Notice is hereby given that the Mayor and City Council will meet on the 29th day of July, 1910, at the hour of 8 o'clock P. M., in the Council Chamber of the City Hall in the City of Holdenville, Oklahoma, for the purpose of receiving the report of the Board of Appraisers making the appraisement and apportionment on various lots, pieces of land charged with the cost of paving and otherwise improving.

That portion of Oklahoma Avenue from the intersection of the St. Louis and San Francisco Railroad right-of-

way and the right-of-way of the Rock Island Railroad at the Union Station and extending to the southeast side of Oak Street; also that portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street.

Also that portion of Cedar Street beginning on Oklahoma Avenue and extending to the southwest side of Eighth Street.

Also that portion of Echo Street beginning on Oklahoma Avenue and extending to the northwest side of Sixth Street.

Also that portion of Sixth Street beginning on Echo Street and extending to Oak Street.

Also that portion of Seventh Street beginning on Creek Street and extending to Oak Street.

Also that portion of Sixth Street beginning at southeast side of Oak Street and extending to the northwest side of Gulf Street, in the City of Holdenville, Oklahoma, and the report of the appraisers is hereto attached and published herewith.

At said meeting the Mayor and Council will hear and adjust any complaints and review any appraisement and apportionment made by said Board of Appraisers, as provided by law, and will review, correct, raise, or lower the same, and the Mayor and Council will adjourn from day to day and from time to time until their labors are completed.

At said meeting all persons interested may appear and be heard.

I. A. Draper, City Clerk.

Moved by Taylor, seconded by Adams, that a meeting be held on Friday, July 29th, 1910, for the purpose of reviewing the report of Board of Appraisers, and apportionment on paving district No. 1, City of Holdenville, Oklahoma. At said meeting the Mayor and Council will hear and adjust complaints, and review the appraisement and apportionment, and correct, raise, lower and review the same, and that the Clerk be directed to publish notice of same in the paper in form as by law provided. Upon vote of 'aye' and 'nay' by roll call, the following vote was recorded: Those voting 'aye,' Adams, Bailey, Cornish, Hyde, Nix, Taylor. Those voting 'nay' none. Absent Pickens, Reese. Motion declared carried. Moved by Taylor, seconded by Adams that the Clerk give the notice of meeting by having the same published in the Holdenville Democrat.

Upon vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Bailey, Cor-



nish, Hyde, Nix, Taylor. 'Those voting 'nay,' none. Absent, Pickens, Reese. Motion declared carried."

And thereafter, on, to-wit, July 29, 1910, at a meeting of said Mayor and Councilmen of said City of Holdenville, the following, among other proceedings were had, as appears from the recorded minutes of said meeting:

The Clerk read the notice of the meeting, as published in the Holdenville Democrat, being the same notice adopted and ordered published by the Council at its meeting of July 15, 1910.

The Clerk reported that no protest had been filed with him.

Councilman Pickens, came in late.

Ordinance Committee presented Resolution No. 27, which was read by the Clerk as follows:

"Resolution No. 27.

Whereas, pursuant to a resolution adopted on the 29th day of June, A. D. 1910, and notice thereafter published by the City Clerk of Holdenville, Oklahoma, as required by law, was duly held at the City Hall in the City of Holdenville, Oklahoma, on the 29th day of July, A. D. 1910, at 8 o'clock P. M. for the purpose of hearing and considering any complaint or objection concerning the appraisalment and apportionment theretofore made and returned by the Board of Appraisers for street improvement District Number One; and,

Whereas, at said session, this Board did hear and consider all complaints and objections to said appraisalment and apportionment and did then and there review, revise and correct same.

Therefore, Be It Resolved by the Mayor and Councilmen of the City of Holdenville, Oklahoma, that said appraisalment and apportionment so made and returned as aforesaid by said Board of Appraisers as aforementioned as reviewed, revised and corrected, be and the same is hereby approved, ratified and confirmed.

Adopted and approved this the 29th day of July, A. D. 1910.

Moved by Adams and seconded by Reese that Resolution No. 27 be adopted as read. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded: 'Those voting 'aye,' Adams, Hyde, Nix, Pickens, Reese, Taylor.

Those voting 'nay,' none.

Absent, Bailey, Cornish.

Motion declared carried and resolution adopted. Moved by Taylor and seconded by Adams that we adjourn. Motion declared carried."

Thereafter, on to-wit, August 23, 1910, at a meeting of said Mayor and Councilmen of said City of Holdenville, the following, among other proceedings, were had, as appears from the recorded minutes of said meeting:

"The minutes of July 20th and 29th and August 2nd were read and approved as read. The Ordinance Committee presented Ordinance No. 27, entitled 'An Ordinance to Assess the Cost of Street Improvements in Street Improvement District No. 1. Moved by Taylor, seconded by Pickens that Ordinance No. 27 be placed upon its first reading.

Upon vote of 'aye' and 'nay' by roll call the following vote was recorded: Those voting 'aye,' Adams, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent Bailey, Cornish, Nix. Motion declared carried and Ordinance No. 27 was read on its first reading. Moved by Hyde, seconded by Adams that Ordinance No. 27 be adopted as read upon its first reading. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Bailey, Cornish, Nix. Motion declared carried and Ordinance No. 27 adopted upon its first reading. Moved by Taylor, seconded by Hyde that we adjourn.

Upon vote of 'aye' and 'nay' by roll call the following vote was recorded: Those voting 'aye,' Adams, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Bailey, Cornish, Nix. Motion declared carried."

Thereafter, on, to-wit, August 25, 1910, at a meeting of the Mayor and Councilmen of said City of Holdenville, the following, among other proceedings, were had, as appears from the recorded minutes of said meeting:

"Moved by Adams, seconded by Reese that Ordinance No. 27 be placed upon its second reading by title. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded: Those voting 'aye,' Adams, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay' none. Absent, Nix. Motion declared carried and Ordinance No. 27 was on its second reading by title. Moved by Hyde, seconded by Cornish that Ordinance No. 27 be adopted as read upon its second reading by title. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded: Those voting 'aye,' Adams, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Nix. Motion declared carried and Ordinance

No. 27 adopted as read on its second reading by title. Moved by Hyde, seconded by Adams, that an emergency be declared and rules suspended for further consideration of Ordinance No. 27. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Nix. Motion declared carried and an emergency declared and rules suspended for further consideration of Ordinance No. 27. Moved by Hyde, seconded by Adams that Ordinance No. 27 be placed upon its third and final reading, section by section. Upon vote of 'aye' and 'nay' by roll call, the following vote was recorded, those voting 'aye,' Adams, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Nix. Motion declared carried and Section 1 was read. Moved by Reese, seconded by Cornish that Section 1, of Ordinance No. 27 be adopted as read on its third and final reading. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Nix. Motion declared carried and Section 2 was read. Moved by Adams, seconded by Hyde that Section 2 of Ordinance No. 27 be adopted as read on its third and final reading. Upon vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Nix.

Motion declared carried.

Moved by Hyde and seconded by Pickens that Ordinance No. 27 be adopted as a whole. Upon vote of 'aye' and 'nay' by roll call, the following vote was recorded. Those voting 'aye,' Ames, Bailey, Cornish, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Nix.

Motion declared carried and Ordinance No. 27 duly passed.

The President of the Council signed and the Clerk attested and affixed the seal of the City of Holdenville to Ordinance No. 27."

Said Ordinance No. 27 as far as the same relates to the matters and things in controversy herein being in words and figures following:

"An Ordinance to assess the cost of street improvement in Street Improvement District Number One in the City of Holdenville, Oklahoma, comprising that portion of Oklahoma Avenue from the intersection of the St. Louis and San Francisco Railroad right-of-way and the right-of-way of the Rock

Island Railroad at the Union Station and extending to the southeast side of Oak Street, also that portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street.

"Also that portion of Cedar Street beginning on Oklahoma Avenue and extending to the southwest side of Eighth Street. Also that portion of Creek Street beginning on Oklahoma Avenue and extending to the north side of Seventh Street. Also that portion of Echo Street beginning on Oklahoma Avenue and extending to the northwest side of Sixth Street. Also that portion of Sixth Street beginning on Echo Street and extending to Oak Street. Also that portion of Seventh Street, beginning on Creek Street and extending to Oak Street. Also that portion of Sixth Street beginning at southeast side of Oak Street and extending to the northwest side of Gulf Street.

"Whereas, the Board of Appraisers appointed by resolution adopted on the 29th day of June, A. D. 1910, to appraise and apportion the benefits to such lots and tracts of land in said Street Improvement District Number One, the same comprising:

"That portion of Oklahoma Avenue beginning at the intersection of the St. Louis and San Francisco Railroad right-of-way and the right-of-way of the Rock Island Railroad right-of-way at the Union Station and extending to the southeast side of Oak Street also that portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street. Also that portion of Cedar Street beginning on Oklahoma Avenue and extending to the southwest side of Eighth Street.

\* \* \* \* \*

"Whereas, the 29th day of July, 1910, having been fixed by the Council for the hearing of any complaints or objections concerning said appraisalment and apportionment and caused due notice of such session to be published according to law and in pursuance of said action and publication such sessions was duly convened and held by the Mayor and Council on the 29th day of July, 1910, and

"Whereas, at said session the Mayor and Council did hear and consider all complaints and objections to said appraisalment and apportionment and did on said date then and there review, revise and correct the same and did by resolution confirm said appraisalment and apportionment as so revised and corrected, and,

"Whereas, all legal requirements have been fully com-

plied with to authorize the levying of said assessment against said lots and tracts of land liable to assessment therefor:

“Now, Therefore, be it ordained by the Mayor and Councilmen of the City of Holdenville, Oklahoma:

“Section 1. That a levy be and the same is hereby made a charge, assessment and tax against the following lots and tracts of land benefited in the City of Holdenville for the grading, paving, curbing, guttering and draining of Street Improvement District Number One the same comprising a portion of the streets as hereinafter set forth: That portion of Oklahoma Avenue from the intersection of the St. Louis and San Francisco Railroad right-of-way and the right-of-way of the Rock Island Railroad at the Union Station and extending to the southeast side of Oak Street:

Orig. No. of Town block	Lot or part of lot	Amount
	e 1-4 blk of blk 68 1-2	\$1107.18
	n 1-4 blk of blk 68 1-2	1110.01
	n 1-4 blk of blk 78 1-2	307.94
	east 1-4 block of block 52 1-2	1047.23
	north 1-4 block of block 52 1-2	1032.08
	east 1-4 block of block 44 1-2	1023.17
	north 1-4 block of block 44 1-2	973.64
	east 1-4 block of block 33 1-2	706.48
	north 1-4 block of block 33 1-2	285.81

“Section 2. That the assessment hereby levied against the above described lots, parts of lots and tracts of land, shall bear interest from the date of the passage of this ordinance at the rate of seven per cent. per annum, and said assessment shall be payable in ten equal annual installments. The first of said installments, with interest to that date on the whole amount, shall be payable on the first day of September, 1911, and one installment thereof with interest upon the whole amount remaining unpaid to said dates respectively, shall be payable on the first day of September of each of the years 1911 to 1920 inclusive; provided however, that the owners of any lot, lots or tracts of land or any part thereof, so assessed, shall have the privilege of paying the whole amount of their respective assessments within thirty days from the date of passage of this ordinance, without interest.

“Passed by the Council and approved by the Mayor this the 25th day of August, 1910.

(Seal)

A. C. Bailey, Pres. Council.

Attest:

I. A. Draper, City Clerk.”

## Sixteenth:

Your Orators further aver that the said map referred to as having been adopted by said Mayor and Councilmen of said City of Holdenville, was never recorded; that your Orators have been unable to find the same or to learn what property the said map purports to parcel, although your Orators have made diligent efforts so to do, and your Orators aver that there has been no sufficient determination of proper quarter block districts of the unplatted property abutting upon said property, for the purpose of appraisalment and assessment, as provided in and by said Act of the Legislature of Oklahoma, approved April 17, 1909, as amended . . . . ., 1909, or under the laws of said State of Oklahoma.

Your Orators further aver that they are informed and believe and upon such information and belief aver the facts to be that it is claimed by the said defendants, and each and all of them, that the said map did include into blocks and quarter blocks, all or a portion of the right-of-way and station grounds, as hereinbefore described, of your Orators at the said City of Holdenville, and that the said Blocks 33½, 44½, 52½, 68½ and 78½ are composed and made up of all or a portion of such right-of-way and station grounds of your Orators.

## Seventeenth:

Your Orators further show to the court, that the premises of your Orators, as hereinabove described, are located wholly within Hughes County, in said Eastern District of Oklahoma; that your Orators are entitled, as hereinbefore alleged, to the full and free use and possession of said premises, for the purposes stated, in connection with said grants by the Congress of the United States to your Orators for a railway right-of-way and station grounds; that the reversionary interest in said premises is vested in the Government of the United States for the benefit of the . . . . . Tribe of Indians; that the said estate of your Orators is not such an estate as is subject under the law to any assessment on account of said paving and street improvements, and that there is no authority of law for the assessment of the reversionary interest in said premises as alleged.

Your Orators further show to the court that by the pretended assessment of the premises described, it is sought to segregate a portion of the premises so granted to your Orators by the Congress of the United States and attach thereto a lien for the payment of such paving and street improvements; that such segregation of a portion of the premises



and consequent lien thereon, if permitted, would be contrary to and destructive of the purposes of said grant by the Congress of the United States to your Orators and that there is no authority of law therefor.

And your Orators further show to the court that there is no legal plat of any tract or tracts of land within said City of Holdenville, wherein is included any blocks designated as 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , and that in truth and in fact no such blocks exist, and your Orators aver that the pretended assessment by said Ordinance No. 27 of said City of Holdenville of the said premises so granted to your Orators and claimed to be located within said blocks 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , is wholly void and of no effect.

Eighteenth:

Your Orators further aver that notwithstanding the said pretended assessment against your Orators' said property, or a part thereof, or against the said Blocks 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$  is wholly void, as alleged, the said defendant, City of Holdenville, acting by and through its clerk, and purporting to proceed under the terms of said Act of the Legislature of Oklahoma, has certified to the defendant B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, a certain installment and interest thereon, of said pretended assessment against the property of your Orators or against said Blocks 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , to be placed upon the delinquent tax list of said County and collected as other delinquent taxes are collected; that the said defendant, B. W. Mackey, as such County Treasurer of Hughes County, Oklahoma, in pursuance of his official duty, as it appears to him, threatens and is about to make a pretended sale of the premises hereinbefore described, or a portion thereof, and has advertised that he will, on November 4, 1912, make a sale of the said premises for the amount of said installments and interest thereon of said pretended assessment, and, if permitted to do so will make such pretended sale on said date, and thereby there will be cast a cloud upon the title of your Orators to the said premises; that the properties of your Orators will be scattered amongst various and different persons, purchasers at said unlawful sale and claiming title and ownership by virtue of such pretended sale and purchase, and your Orators will be compelled to resort to numerous and vexatious actions at law and suits in equity to protect its said property rights and interests, all to the irreparable damage of your Orators.

## Nineteenth:

That the said defendants, Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer, partners in trade doing business under and in the name of Spitzer & Company, do claim to have an interest in and to all or a portion of the warrants or bonds issued by the said City of Holdenville, under the terms of said Act of the Legislature of Oklahoma, in payment of said paving and street improvements for which said pretended assessment was laid against the property hereinbefore described, the extent of such interest being to your Orators unknown.

## Twentieth:

That your Orators have paid all lawful taxes and assessments levied against them or against their property, and is and at all times has been ready and willing to pay any and all lawful taxes and assessments levied against them or their property and do now, in the event the court shall find them or either of them liable to any assessment or part thereof, offer to pay and discharge the same.

In consideration whereof, and for as much as your Orators have no sufficient remedy at law for the wrong done and threatened to be done, and that the remedy at law is inadequate to afford protection to your Orators against the trespass and wrong done, being done or threatened to be done, for the reasons hereinbefore stated, and are only relievable in a court of equity where matters of this kind are properly cognizable and reviewable.

Your Orators to the end that they may obtain the relief to which they are justly entitled in the premises do pray the court:

## I.

To grant to them your writ of subpoena directed to the said B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, the City of Holdenville, a municipal corporation, and Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer, partners in trade doing business under and in the name of Spitzer, Rorick & Company, requiring and commanding them, and each of them, to appear herein within the time prescribed by law and the rules of this Honorable Court, and full, true and direct answer make to the several allegations in this bill contained, but answer under oath is hereby waived.



## II.

That the said defendants, and each of them, be required to set forth any and every adverse interest, claim, or demand in or to the said premises of your Orators, hereinbefore described, to the end that the same may be justly adjudicated, and declared null and void as against your Orators, and that the title and ownership of your Orators in and to the said premises and in and to the full and free use and possession thereof for the uses stated, be established and confirmed as against any and all claims of the defendants, or either or any of them, and all cloud thereon forever removed.

## III.

That upon a final hearing of this cause, the said pretended assessment upon the said premises of your Orators, and the lien sought to be attached thereby, as hereinbefore alleged, be declared null and void and of no effect as against your Orators, or their said premises herein described, and that the title and ownership of your Orators in and to the said premises and in and to the full and free use and possession thereof, for the uses stated, be established and confirmed as against any and all claims arising out of said pretended assessment, and all cloud thereon forever removed.

## IV.

That Your Honor grant unto your Orators your writ of injunction, enjoining and restraining the said B. W. Mackey, as Treasurer of Hughes County, Oklahoma, and personally, and all persons acting for, under or with him or in pursuance of his directions or authority or authority of his office, from making said pretended sale, or any sale of your Orators' said premises, and from taking any action to enforce the payment of said pretended assessment or any and all installments thereof and interest and penalties thereon as are prescribed for a failure to make such payment, pending the final determination of this cause by this court. And, may it please Your Honor, on a final determination of this cause, that the said injunction be made perpetual.

## V.

And that your Orators may have such other and further relief, preliminary and final, as to the court may seem meet and proper, and which equity may require, and for costs.

C. O. BLAKE &

J. G. GAMBLE,

*Solicitors for Complainants.*

Note: The defendants and each of them are required to make full, true and direct answer to each and every of the allegations contained in the foregoing Bill of Complaint, but not under oath, answer under oath being hereby expressly waived.

C. O. BLAKE & J. G. GAMBLE,  
*Solicitors for Complainants.*

State of Oklahoma, County of Canadian—ss.

I, J. G. Gamble, upon oath say: That I am an attorney for the complainants, The Chicago, Rock Island and Pacific Railway Company and the Choctaw, Oklahoma and Gulf Railroad Company, in the above entitled cause, and as such am authorized to make this affidavit; that there is no officer or managing agent of said complainants in Canadian County, Oklahoma, and I do make this affidavit for and on behalf of said complainants, which are foreign corporations; that I have read the above and foregoing bill of complaint and know the contents thereof; that the same is true, in all of its allegations, except such as are alleged on information and belief, and as to which I verily believe the same to be true.

J. G. Gamble.

Subscribed and sworn to before me this 31st day of October, 1912.

(Seal)

Israel G. Futoransky, Notary Public.

My Commission expires 9/6/16.

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“Exhibit A.”

## ARTICLES OF INCORPORATION of the

### CHOCTAW COAL AND RAILWAY COMPANY.

We, the undersigned, do hereby associate and unite together as a corporation under the provisions of title 2, chapter 34, General Statutes of Minnesota, 1878, and for that purpose do make, agree to and execute the following articles of incorporation:

#### Article 1.

The name of this corporation will be the Choctaw Coal and Railway Company, and its principal place of business shall be in the City of Minneapolis and State of Minnesota.

#### Article 2.

The general nature of the business of this corporation shall be the mining, smelting, reducing, refining, working,

shipping, selling, marketing and dealing in coal, iron and all kinds of ores and minerals; the working of stone quarries and marketing the materials and products thereof; the manufacture of coke, charcoal, pig iron, charcoal blooms and any and all kinds of iron, steel and other metals; the buying, leasing, working, selling and dealing in mineral and other mineral lands; the buying, owning, improving, leasing and selling any real or personal property, notes, bonds, mortgages or other securities necessary or convenient for the carrying out of and securing of any of the things enumerated herein; the buying, owning, improving, leasing, mortgaging and selling of any real estate upon which the corporation may have or hold any mortgage, lien, or judgment or other incumbrance, or in which the corporation may have an interest; and the building, acquiring and maintaining and operating roads, ways and railroads necessary or useful in the operation or developing of any mine or quarry owned or operated by this corporation.

#### Article 3.

The time of the commencement of this corporation shall be the first of December, A. D. 1887, and the period of its continuance shall be thirty years.

#### Article 4.

The amount of Capital Stock of this corporation shall be two million five hundred thousand dollars (\$2,500,000), divided into fifty thousand shares (50,000) of fifty dollars (\$50) each, and shall be paid in at such times and periods and in such amounts, and installments as shall hereafter be determined by the Board of Directors.

#### Article 5.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject shall not exceed Five Hundred Thousand Dollars (\$500,000).

#### Article 6.

The government of this corporation and the management of its affairs shall be vested in a board of seven directors to be elected annually on the second Tuesday of January in each year, during the continuance of this corporation, whose term of office shall be one year and until their successors are elected and qualified. Immediately after the election of directors in each year they shall elect from among their number a President, Vice-President, Secretary and Treasurer, who shall hold office for one year and until their successors are elected and qualified. The offices of Secretary and Treasurer may be held by the same person. Until said election of the second Tuesday of January, A. D. 1888, George B. Kirkbride, Jacob A. Wol-

verton, John Washburn, Frank B. Lewis and Arthur M. Keath, all of Minneapolis, Minnesota, William S. Taylor, of Philadelphia, Pennsylvania, and Marcus W. Lewis, of Minneapolis, shall constitute and be the first Board of Directors, of whom George B. Kirkbride shall be President, Jacob A. Wolverton, Vice-President, and Arthur M. Keith, Secretary and Treasurer.

The names and places of residence of the persons forming this association for incorporation are as follows:

George B. Kirkbride, Jacob A. Wolverton, John Washburn and Frank B. Lewis, all of the City of Minneapolis, and State of Minnesota. In the testimony whereof, the parties hereto have hereunto subscribed their names and affixed their seals this 28th day of November, A. D. 1887, at the City of Minneapolis, State of Minnesota.

George B. Kirkbride,	(Seal)
Jacob A. Wolverton,	(Seal)
John Washburn,	(Seal)
Frank B. Lewis.	(Seal)

Signed, sealed and delivered  
in presence of

E. K. Fairchild,  
Chas. T. Thompson.

State of Minnesota, County of Hennepin--ss.

Be it known that on this 28th day of November, A. D. 1887, personally appeared before me, a Notary Public, in and for said County and State, George B. Kirkbride, Jacob A. Wolverton, John Washburn and Frank B. Lewis, to me personally known to be the identical persons who executed the foregoing articles of incorporation, and they each for themselves acknowledged the execution of the same as their free act and deed.

(Notarial Seal.) Edwin K. Fairchild, Notary Public,  
Hennepin County, Minnesota.

Office of Register of Deeds, County of Hennepin, State of Minnesota.

I hereby certify that the within articles were filed for record in this office on the 30th day of November, A. D. 1887, at 9 o'clock A. M., and were duly recorded in Book ..... of ..... page .. .. .

John F. Peterson, Register of Deeds.

Filed for record in this office this 30th day of November, A. D. 1887, at 11:15 o'clock A. M.

H. Mattson, Secretary of State.

CERTIFICATE OF AMENDMENT OF THE ARTICLES  
OF INCORPORATION  
of the  
CHOCTAW COAL AND RAILWAY COMPANY.

It is hereby certified that at a meeting of the stockholders of the Choctaw Coal and Railway Company, duly and regularly called for that purpose, at which meeting all of the stockholders of said company were present and all of said stock was voted, which said meeting was held in the City of Minneapolis, Minnesota, on Tuesday, the 22d day of May, A. D. 1888, the following resolution was by the unanimous vote of the shareholders and shares of stock of said Company, adopted, to-wit:

Resolved, by the stockholders of the Choctaw Coal and Railway Company, that the following new article, altering, modifying and changing Article 4. of the Articles of Incorporation of the Choctaw Coal and Railway Company be and the same is hereby adopted and substituted for and in the place of said Article, to-wit:

Article 4.

The amount of the Capital Stock of this Corporation shall be three million seven hundred and fifty thousand dollars (\$3,750,000), divided into seventy-five thousand shares of fifty dollars (\$50.00) each, and shall be paid in at such times and periods and in such amounts and installments as shall hereafter be determined by the Board of Directors. It is further certified that at a meeting of the Board of Directors of said Corporation held at said 22d day of May, A. D. 1888, and duly and regularly called for that purpose immediately following said stockholders' meeting by the unanimous resolution of said Board of Directors the said action of said stockholders and said new articles were duly adopted, ratified and confirmed, and that by the adoption of said resolution by said stockholders and by said Board of Directors the said Articles of Incorporation of said Company were amended by increasing the amount of the capital stock of said Company from two million five hundred thousand dollars (\$2,500,00), to three million seven hundred and fifty thousand dollars (\$3,750,000).

In Witness Whereof, we the undersigned, the President and Secretary of the said The Choctaw Coal and Railway Company, hereunto set our hands this 3d day of January, A. D. 1889.

George B. Kirkbride, President,  
Arthur M. Keith, Secretary.

In presence of  
E. K. Fairchild,  
J. N. Strong.

State of Minnesota, County of Hennepin.

George B. Kirkbride and Arthur M. Keith came before me personally and each being sworn, each for himself, says:

That the said George B. Kirkbride is the President and chief executive officer, and the said Arthur M. Keith is the Secretary of the Choctaw Coal and Railway Company, the corporation above named. That they and each of them have read the foregoing Certificate of Amendment of the Articles of Incorporation of the Choctaw Coal and Railway Company, and the same persons who have subscribed the same as President and Secretary respectively. That the said certificate is true of their own knowledge.

Edwin K. Fairchild, Notary Public,

(Notarial Seal)

Hennepin Co., Minn.

Filed in this office for record Jan'y 4th, A. D. 1889, at 10:50 o'clock A. M.

H. Mattson, Secretary of State.

CERTIFICATE OF AMENDMENT OF THE ARTICLES  
OF INCORPORATION  
of the  
CHOCTAW COAL AND RAILWAY COMPANY.

It is hereby certified that at a meeting of the stockholders of the Choctaw Coal and Railway Company called for that purpose, at which meeting all of the stockholders of said Company were present in person or by proxy and all of said stock was voted, which said meeting was held in the City of Minneapolis, Minnesota, on Saturday, the 20th day of July, A. D. 1889, the following resolution was by the unanimous vote of the shareholders and shares of stock of said company, adopted, to-wit:

Resolved, by the stockholders of the Choctaw Coal and Railway Company, that the following new articles, changing Articles 5 and 6 of the Articles of Incorporation of the Choctaw Coal and Railway Company, be and the same are hereby adopted and substituted for and in the place of said articles, to-wit:

Article 5.

The highest amount of indebtedness or liability to which this corporation shall at any time be subject shall be ten millions of dollars.

Article 6.

The government of this corporation and the management

of its affairs shall be vested in a Board of nine Directors to be chosen annually on the second Tuesday of January in each year, during the continuance of this corporation, whose term of office shall be one year, or until their successors are elected or qualified. As soon after the election of the directors as may be, they shall choose from among their number a President and Vice-President, who shall hold office for one year or until their successors are elected or qualified. The Secretary shall be chosen by the Board of Directors to serve one year, or until their successors are elected. The offices of Secretary and Treasurer may be held by the same person."

It is further certified that at a meeting of the Board of Directors of said corporation held in the City of Philadelphia, Pennsylvania, on the 30th day of July, 1889, duly and regularly called for that purpose, the action of said stockholders in adopting said amendments was duly concurred in, ratified and confirmed; and said amendments were by said Board duly adopted, by a resolution duly passed by said Board. And it is further certified that by the adoption of said resolutions said Articles of Incorporation were amended by increasing the amount of the indebtedness or liability to which said company shall at any time be subject, from five hundred thousand dollars to ten millions of dollars; and by increasing the number of directors of said Company from seven to nine; and by permitting the Board of Directors, whose choice of Secretary and Treasurer was theretofore limited to the persons constituting said Board, to select for such officers any persons whomsoever.

In Witness Whereof, we the undersigned, the President and the Secretary of the Choctaw Coal and Railway Company hereunto set our hands and seals this 16th day of September, A. D. 1889.

Charles Hartshorne,  
President. (Seal)

In presence of

D. G. Baird, (to signature of Chas. Hartshorne).  
E. R. Hartshorne.

William S. Taylor,  
Secretary. (Seal)

C. H. Dureer, (to signature of Wm. S. Taylor).  
A. L. Howe.

State of Pennsylvania, County of Philadelphia--ss.

Charles Hartshorne came before me personally, and, being duly sworn on his oath, says that he is the President and chief executive officer of the Choctaw Coal and Railway Company, the corporation above named, that he has read the



foregoing certificate of amendment of the Articles of Incorporation of the Choctaw Coal and Railway Company, and that he is the same person who has subscribed said certificate as President, and that said certificate is true of his own knowledge.

Subscribed and sworn to before me this 16th day of September, A. D. 1889.

William C. Alderson,  
Philadelphia County,  
Pennsylvania.

(Notarial Seal)

State of Kansas, County of Jackson.—ss.

William S. Taylor came before me personally, and, being duly sworn on his oath, says that he is the Secretary of the Choctaw Coal and Railway Company, the corporation above named, that he has read the foregoing certificate of amendment of the Articles of Incorporation of the Choctaw Coal and Railway Company, and that he is the same person who has subscribed said certificate as Secretary, and that said certificate is true of his own knowledge.

Subscribed and sworn to before me this 18th day of September, A. D. 1889.

Robert B. Cone, Notary Public,  
Jackson County, Kansas.

(Notarial Seal)

#### Office of Register of Deeds.

County of Hennepin, State of Minnesota. No. 96387.

I hereby certify that the within amendment was filed for record in this office on the 20th day of September, A. D. 1889, at 2-1½ o'clock P. M., and was duly recorded in Book ..... of ..... page .....

John F. Peterson, Register of Deeds.  
By W. A. Plummer, Deputy.

Filed in this office for record September 20th, A. D. 1889, at 4:30 o'clock P. M.

H. Mattson, Secretary of State.

State of Minnesota.

(State Seal.)

Department of State.

I, F. P. Brown, Secretary of the State of Minnesota, do hereby certify that I have compared the annexed copy with the original Articles of Incorporation and Amendments in my office of Articles of Incorporation of 'Choctaw Coal and Railway Company' as filed in this office November 30th, 1887,



and recorded in Book 'S' of Incorporations, page 580, etc.; also Certificate of Amendment of the said Articles, as filed in this office, January 4, 1889, recorded in Book 'V' of Incorporations, page 432, etc.; and Certificate of Amendment to said Articles of Incorporation, as filed September 20th, 1889, and recorded in Book 'W' of Incorporations, page 589, etc.; and that said copy is a true and correct transcript of said original Articles of Incorporation, and also of said certificates of Amendments to said Articles and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capital, in Saint Paul, this twenty-first day of February, A. D. eighteen hundred and ninety-one.

(Seal of State)

F. P. Brown,  
Secretary of State."

Endorsed: Filed Nov. 1, 1912, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 3rd day of March, A. D. 1913, the defendants B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, and The City of Holdenville, filed their Answer herein which is in words and figures as follows:

**Answer of Defendants Mackey, County Treasurer, and the City of Holdenville.**

The joint and several answer of B. W. Mackey as County Treasurer of Hughes County, Oklahoma, and The City of Holdenville, two of the defendants, to the bill of complaint of The Choctaw, Oklahoma & Gulf Railroad Company and The Chicago, Rock Island & Pacific Railway Company, plaintiffs.

These defendants, for answer to said bill of complaint, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say: They

*Admit* the corporate capacities, citizenship and residences of the plaintiffs as in the bill of complaint herein alleged, and that the defendant B. W. Mackey is the duly elected, qualified and acting treasurer of Hughes County, in the State of Oklahoma, and a resident and citizen of said Hughes County in said State and said Eastern District of Oklahoma; and that the defendant, The City of Holdenville, is a municipal corporation and city of the first class, organized and existing under the laws of the State of Oklahoma, and is located in said Hughes County, Oklahoma, in said Eastern District of Oklahoma.

*Admit* that this suit is an action of a civil nature; that the matter in dispute herein exceeds, exclusive of interest and costs, the sum and value of Three Thousand Dollars (\$3000.00); that the controversy herein is a controversy wholly between citizens of different States and a corporation existing under and by virtue of an Act of Congress.

*Admit* that on the 28th day of November, 1887, there was organized under and pursuant to the laws of the State of Minnesota, a corporation called, "Choctaw Coal & Railway Company," and which was empowered, as in plaintiffs' bill of complaint alleged.

*Admit* that by an Act of Congress approved on, to-wit, February 18, 1888, the said Choctaw Coal & Railway Company was empowered and authorized to construct and maintain a railway, telegraph and telephone line, and also to construct and maintain a branch line of railway through and between the points in what was then Indian Territory, as in plaintiffs' bill of complaint alleged.

*Admit* that pursuant to its charter and the said Act of Congress, the said Choctaw Coal & Railway Company proceeded to develop coal mines under the leases and at the places as in plaintiffs' bill of complaint alleged, and to construct a railway line connected therewith for the transportation of the products of such mines; that in the prosecution of such work said corporation became insolvent, and that the United States Government, by an Act approved by Congress on, to-wit, August 24, 1894, empowered the purchasers of the rights of way, railroads, mines, coal leasehold estates and other property and the franchises of the said Choctaw Coal & Railway Company, at any sale made under or pursuant to any decree of court, to form a corporation empowered as in plaintiffs' bill of complaint alleged, and vested with all the rights, franchises and properties as in plaintiffs' bill of complaint alleged; and that pursuant to said last named Act of Congress there was organized the complaining corporation, The Choctaw, Oklahoma & Gulf Railroad Company; but these defendants aver that they are without knowledge that it became necessary for the United States Government to make some provision for the work undertaken by the Choctaw Coal & Railway Company to be carried on, or that it should be carried on in order that the leased mines might be operated for the benefit of the Indians as wards of the United States or for the purpose of the development of commerce in the said Territories and among the several States of the Union, and are without knowledge that, to accomplish said purposes or any

of them, or to secure the operation of said mines for the benefit of the Indians or in the interests of interstate commerce, the United States Government by said Act of Congress approved August 24, 1894, did empower the purchasers of the rights of way, railroads, mines, coal leasehold estates and other property, and the franchises of the Choctaw Coal & Railway Company as in plaintiffs' bill of complaint alleged.

*Admit* that the United States Government by an Act of Congress approved, to-wit, April 24, 1896, duly recognized the Choctaw, Oklahoma & Gulf Railroad Company pursuant to the Act approved August 24, 1894, and further presented the rights, powers and duties thereof, as in plaintiffs' bill of complaint alleged.

*Admit* that pursuant to and in accordance with the Acts of Congress described, The Choctaw, Oklahoma & Gulf Railroad Company purchased and became possessed of and vested with all the rights, title, interest, property, possession claim and demand in law and in equity, in and to such rights of way, railroads, mines, coal leasehold estates, and with the rights, powers, immunities, privileges and franchises which had been granted to said Choctaw Coal & Railway Company, or conferred upon it, by any Act of Congress, or which it possessed by virtue of its charter under the laws of the State of Minnesota.

*Admit* that prior to March 24, 1904, The Choctaw, Oklahoma & Gulf Railroad Company, pursuant to and in accordance with its rights, powers, privileges and duties under and by virtue of its charter and the various Acts of Congress heretofore referred to proceeded to construct and acquire and to become possessed of and did construct and acquire and become possessed of a line of railway extending from a point on the West bank of the Mississippi River, at or near Hopefield in Crittendon County in the State of Arkansas, opposite Memphis, Tennessee, by way of Little Rock, Pulaski County, Arkansas, to a point on the boundary line between the Territory of Oklahoma and the State of Texas, at or near Texola in Greer County, Oklahoma, as in plaintiffs' bill of complaint alleged.

*Admit* that pursuant to and in accordance with its rights, powers, privileges and duties, and by virtue of its charter and the various Acts of Congress, the said The Choctaw, Oklahoma & Gulf Railroad Company did locate its said railway from certain leased coal veins of the said Choctaw Coal & Railway Company to an intersection with the Atchison, Topeka & Santa Fe Railway, as provided in said Act of Con-

gress of February 18, 1888, and did file its maps, and do all things by law required to acquire a right-of-way and station grounds therefor, and that as a part of such right-of-way and station grounds the said The Choctaw, Oklahoma & Gulf Railroad Company was granted under the terms and by virtue of said Act of Congress, the following described tract of land, to-wit:

Beginning at a point three hundred two and five-tenths (302.5) feet northwesterly from the intersection of the main track of said railway company with the west line of section eighteen (18) township seven (7) north, range nine (9) east, measured along said main track; then north-easterly at right angles one hundred and fifty (150) feet; thence southeasterly at right angles parallel to and one hundred and fifty (150) feet easterly from the center of said main track; three thousand (3000) feet; thence southwesterly at right angles three hundred (300) feet; thence northwesterly at right angles, parallel to and one hundred and fifty (150) feet westerly from the center of said *mine* track, three thousand (3000) feet; thence north-easterly, at right angles one hundred and fifty (150) feet to the point of beginning, lying and being in section thirteen (13), township seven (7) north, range eight (8) east, and section eighteen (18), township seven (7) north, range nine (9) east, Hughes County, Oklahoma;

and that the said, The Choctaw, Oklahoma & Gulf Railroad Company was vested with an estate in and to the said described premises under and by virtue of said Acts of Congress, all as in plaintiffs' bill of complaint herein set forth.

*Admit* that on, to-wit, March 24, 1904, The Choctaw, Oklahoma & Gulf Railroad Company, being thereunto duly authorized by an Act of Congress leased to the Chicago, Rock Island & Pacific Railway Company, one of the complainants herein, all its railway lines and appurtenances thereto, including that tract of land hereinabove particularly described and located in section thirteen (13), township seven (7) north, range eight (8) east, and section eighteen (18), township seven (7) north, range nine (9) east, in Hughes County, Oklahoma, and equipment thereof, for a period of nine hundred ninety-nine (999) years; and that The Chicago, Rock Island & Pacific Railway Company, under the several Acts of Congress in the bill of complaint herein mentioned, and by virtue of its chartered rights under the laws of the States of Illinois and Iowa, under which it is incorporated, had full power, right, and authority to acquire and hold, by lease, said railway lines,

as well as to construct, acquire, hold, build and operate all the other lines which it now owns and operates within the State of Oklahoma; but these defendants say that they are without knowledge that The Chicago, Rock Island & Pacific Railway Company, under and by the terms of said lease, succeeded to all the rights, powers, facilities, franchises, properties and interests of the said The Choctaw, Oklahoma & Gulf Railroad Company in and to said railway lines, and to the full and free use and possession of said railway lines, properties and rights of way, including the premises hereinabove particularly described.

*Admit* that the plaintiffs have constructed and do now maintain on and upon the said rights of way and on and upon the premises hereinabove particularly described, railway tracks, both main and siding, composed of ballast, ties and steel, station houses, freight depots, and other necessary appurtenances which are in constant use in the performance of the charter powers of the plaintiffs.

*Admit* that the premises hereinabove particularly described or a portion thereof, are contiguous to and abut upon Oklahoma avenue, and that the same is a street or thoroughfare of the defendant, The City of Holdenville.

*Admit* that The City of Holdenville, under and by virtue of an Act of the Legislature of the State of Oklahoma, entitled, "An Act to provide for the improvement of streets and other public places within cities of the first class, by grading, paving, macadamizing, curbing, guttering and draining the same, and declaring an emergency," approved April 17, 1908, as amended by the Act of said Legislature approved May 23, 1909, and acting by and through its Mayor and Councilmen, did on the 20th day of January, 1910, adopt a certain resolution numbered 20, declaring it necessary to grade, pave, curb, gutter and drain certain streets and avenues, or parts of streets and avenues, of the said City of Holdenville, including a part of said Oklahoma avenue, to-wit, that part of Oklahoma avenue extending approximately 1461 feet in a southeasterly direction from the point of intersection of the Frisco and Rock Island rights of way at the Union Station to the southeast side of Oak street in said city, and directing a publication thereof in a newspaper published and having a general circulation within said city, as in plaintiffs' bill of complaint alleged; and admit that thereafter such other proceedings by the Mayor and Councilmen of said City, agents, servants and appointees, took place and were had, touching the making of said improvement, and the appraisalment and

apportionment of benefits to the property liable for the cost of such improvement, and the assessment of the cost thereof against such property, as that said improvement was made, an appraisalment and apportionment of the benefits to such property had and confirmed, and an ordinance passed levying assessments in accordance with such appraisalment and apportionment as so confirmed against the several lots and tracts of land liable therefor; and that proceedings were had in that behalf as set forth in the "fourteenth" and "fifteenth" subdivisions of plaintiffs' bill of complaint herein; and

*Admit* farther that certain tracts of land in said appraisalment and apportionment of benefits and in said ordinance levying assessments described, to-wit, the north quarter-block of block numbered 33 & 1/2, the east quarter-block of block numbered 33 & 1/2, the north quarter-block of block numbered 44 & 1/2, the east quarter-block of block numbered 44 & 1/2, the north quarter-block of block numbered 52 & 1/2, the east quarter-block of block numbered 52 & 1/2, the east quarter-block of block numbered 68 & 1/2, the north quarter-block of block numbered 68 & 1/2, and the north quarter-block of block numbered 78 & 1/2, were so assessed in the amounts in plaintiffs' bill of complaint alleged, and that such tracts of land are and do constitute a part of the plaintiffs' right of way and station grounds, to-wit, that tract of land in plaintiffs' bill and hereinbefore particularly described.

And answering farther these defendants *deny* that there has been no sufficient determination of proper quarter block districts of that portion of plaintiffs' said station grounds fronting and abutting upon said improvement, for the purpose of appraisalment and apportionment of benefits and assessment of costs in accordance with such appraisalment and apportionment, as provided in and by said Act of the Legislature of Oklahoma approved April 17, 1908, as amended by Act approved on May 23, 1909; and although these defendants admit that a certain map referred to in the proceedings of the Mayor and Councilmen in plaintiffs' bill set forth as having been adopted by said Mayor and Council of said City of Holdenville, was never recorded otherwise than that said map itself so adopted by said Mayor and Council did constitute a part of the record of the proceedings of said Mayor and Council, by which they did include so much of said station grounds in proper quarter block districts for the purpose of appraisalment and assessment, yet they allege that such map was not subject or required to be made of record otherwise under the laws of the State of Oklahoma.



And further answering in this behalf these defendants allege that said specifically described tract of land, 300 feet in width and 3000 feet in length, extends from said point in said section 13 in a southeasterly direction, and that the larger portion thereof lies within the corporate limits of the said City of Holdenville, and constitutes the railway yards and station grounds in that city of the complainant, The Choctaw, Oklahoma & Gulf Railroad Company; that Oklahoma avenue in said city runs parallel and is contiguous to the said station grounds, along the northeasterly side thereof, the northeasterly boundary line of said tract constituting said station grounds and the southwesterly boundary line of Oklahoma avenue being identical; and that Choctaw avenue in said city runs parallel and is contiguous to said tract constituting said station grounds along the southwesterly side thereof, the southwesterly boundary line of said tract and the northeasterly boundary line of said Choctaw avenue being identical, and that the said tract of land occupies all the space between said Oklahoma avenue on the northeast side thereof in the said City of Holdenville. That so much of said Oklahoma avenue as was so improved by grading, paving, curbing, guttering and draining thereof, and to which said station grounds are contiguous as aforesaid, is approximately 1461 feet in length, and the width of said improvement extends 30 feet outward from the northeasterly boundary line of said station grounds throughout the entire 1461 feet of the length thereof; that blocks numbered respectively 34, 44, 53, 68 and 79 on the official plat of said city now on file in the office of the Register of Deeds of said Hughes County, each approximately 300 feet square, front on said Oklahoma avenue on the opposite side thereof from said station grounds; and that intervening streets, to-wit, those designated on the said official plat as Echo, Creek, Cedar and Oak, each 80 feet in width, extend in a northeasterly direction from said Oklahoma avenue, and in a southwesterly direction from said Choctaw avenue. That under and by virtue of the Acts of the Legislature of the State of Oklahoma mentioned in plaintiffs' bill of complaint herein, it is provided, among other things, that,

"if any portion of the property abutting upon such improvement shall not be platted into lots and blocks, the Mayor and Council shall include such property in proper quarter block districts for the purpose of appraisalment and assessment."

And these defendants allege farther that such portion of plaintiffs' said right of way and station grounds as abutted upon such improvement throughout the length of 1761 feet



thereof was not platted into lots and blocks prior to the time it became necessary to the making of the appraisalment and assessment in plaintiffs' bill of complaint herein mentioned; and that the Mayor and Council of said City of Holdenville, prior to the said appraisalment and assessment and acting pursuant to said provision of the said Acts of the Legislature of the State of Oklahoma, did include in proper quarter block districts for the purpose of such appraisalment and assessment, all that part of said station grounds particularly described as follows, to-wit:

All that part of said right of way and station grounds lying as aforesaid between Oklahoma and Choctaw avenues in said city and extending from the southeasterly side of the area of intersection of the said right of way and station grounds with the right of way and station grounds of the St. Louis and San Francisco Railway Company, a distance of 1761 feet approximately, in a southeasterly direction between said avenues to the northwesterly boundary line of Gulf street in said city, as such line is extended in continuation thereof across said right of way and station grounds between said Oklahoma and Choctaw avenues;

and in that behalf did direct and cause the city engineer of said city to plat and map into proper quarter block districts such part of said station grounds; and did approve and adopt such map. That said map so adopted by said Mayor and Council did and does show the precise location of each of such quarter block districts and the precise dimensions thereof; and these defendants aver farther that so much of said right-of-way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 33 and 34 on the official plat of said city, and between the northwesterly boundary line of said Echo street as extended across said station grounds and right-of-way and the southeasterly boundary line of the area of intersection of the respective rights of way and station grounds of the St. Louis and San Francisco Railway Company and The Choctaw, Oklahoma and Gulf Railroad Company was platted and mapped and numbered as said block 33½.

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 44 and 45 on the official plat of said city, and between the northwesterly boundary line of said Creek street as extended across said station grounds and right of way and the southeasterly boundary line of said Echo street as extended across

said station grounds and right of way, was platted and mapped and numbered as said block 44½.

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 52 and 53 on the official plat of said city, and between the northwesterly boundary line of said Cedar street as extended across said station grounds and right of way and the southeasterly boundary line of said Creek street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 52½.

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 68 and 69 on the official plat of said city, and between the northwesterly boundary line of said Oak street as extended across said station grounds and right of way and the southeasterly boundary line of said Cedar street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 68½.

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 78 and 79 on the official plat of said city, and between the northwesterly boundary line of said Gulf street as extended across said station grounds and right of way and the southeasterly boundary line of said Oak street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 78½.

That each of said blocks, 33½, 44½, 52½, 68½ and 78½, is of the same size as the blocks on the northeasterly and southwesterly sides thereof, to-wit, 300 feet square, as near as may be.

That so much of said station grounds and rights of way as lies between said blocks 33½ and 44½, being of the width of said Echo street and in continuation thereof, and as lies between said blocks 44½ and 52½ being of the width of Creek street and in continuation thereof, and so much thereof as lies between said blocks 52½ and 68½ being of the width of Cedar street and in continuation thereof, and so much thereof as lies between said blocks 68½ and 78½ being of the width of said Oak street and in continuation thereof, was excluded from said quarter block districts.

That the northeast half of each of said blocks 33½, 44½, 52½, 68½ and 78½ was platted and mapped as aforesaid into quarter block districts by dividing such half into equal parts by a line extending across the same to the center of such block at right angles to the northeast boundary line thereof. That

inasmuch as said Oklahoma avenue extends in a southeasterly direction along the front of said blocks 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , and the exterior lines of said quarter block districts are on the two sides parallel to said Oklahoma avenue, and on the other two sides at right angles to said Oklahoma avenue, such quarter block districts were under said appraisal and apportionment and in said ordinance levying said assessment described with reference to the points of the compass, that is to say, the most northerly quarter block in each of said blocks was described as "North quarter block" and the most easterly quarter block in each of said blocks was described as the "East quarter block."

They *admit* that under and by virtue of said proceedings of the Mayor and Council of said City of Holdenville, it was sought to attach a lien to so much of plaintiffs' said tract of land as is included within said quarter block districts for the payment of the assessment levied under said ordinance against such quarter block districts for the payment of a portion of the costs of such improvement; but they *deny* that there is no legal plat, of any tracts of land within said City of Holdenville, wherein is included any blocks designated as 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , but on the contrary allege that a legal plat of such tracts of land does exist and that in truth and in fact such blocks do exist.

Answering further, these defendants *deny* that the reversionary interest in and to said premises hereinbefore specifically described and in part included within said quarter-block districts, shown by said map, is vested in the Government of the United States; on the contrary, these defendants allege that the reversionary interest, if any, in and to said lands is vested in the nation or tribe of Indians from which such lands were taken, and that by section 2 of said Act of Congress approved on, to-wit, February 18, 1888, and the amendment thereof approved on, to-wit, February 13, 1889, granting to the said Choctaw Coal & Railway Company the lands constituting its right of way and station grounds, it is provided that when any portion of the lands so granted shall cease to be so used, such portion shall revert to the nation or tribe of Indians from which the same shall be taken. That said section 2 of said Act (here set out for the convenience of the court) is in the words and figures following:

"Sec. 2. That said corporation is authorized to take and use for all purposes of railway, and for no other purpose, a right of way one hundred feet in width through said Indian Territory for said main line and branch of the Choctaw Coal and Railway Company; and to take

and use a strip of land two hundred feet in width, with a length of three thousand feet, in addition to right of way, for stations, for every ten miles of road, with the right to use such additional ground where there are heavy cuts or fills as may be necessary for the construction and maintenance of the road-bed, not exceeding one hundred feet in width on each side of said right of way, or as much thereof as may be included in said cut or fill: Provided, That no more than said addition of land shall be taken for any one station: Provided further, That no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railroad, telegraph, and telephone lines; and when any portion thereof shall cease to be so used, such portion shall revert to the nation or tribe of Indians from which the same shall be taken."

These defendants *deny* that the Government of the United States, or the nation or tribe of Indians from which said lands were taken, is vested with any reversionary interest in and to said lands, as against the right of the Congress to impose taxes and liens therefor upon said lands, or as against the right of the State of Oklahoma to impose taxes and liens therefor upon said lands, whether for general revenue or for the payment of assessments for local improvements; and *deny* that the estate vested in plaintiffs in and to said tract of land is such an estate as that said land is not subject under the law to any assessment on account of said paving and street improvement; and *deny* that there is no authority of law for the assessment of so much of said specifically described tract of land as was by the Mayor and Council of said City of Holdenville included in said quarter-block districts for the purpose of appraisement and assessment; on the contrary, these defendants allege that the said tract of land or so much thereof as was by the said Mayor and Council included within said quarter-block districts was and is subject to the assessment so levied against it by the Mayor and Council of the said City of Holdenville and that plaintiffs' estate in them vested as averred in plaintiffs' bill of complaint was and is subject to such assessment of said lands; and allege further that by section 5 of said Act of the Congress, approved on, to-wit, February 18, 1888, it was provided that Congress shall have the right so long as said lands are occupied and possessed by said nations and tribes of Indians, to impose such additional taxes upon said railroad as it might deem just and proper for their benefit, and that any Territory or State thereafter formed

through which said railway shall have been established, may exercise the like power as to such part of said railway as may lie within its limits. That section 5 of said Act (here set out for the convenience of the court) is in the words and figures following:

"Sec. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands the said railway may be located, the sum of fifty dollars, in addition to compensation provided for in this act, for property taken and damages done to individual occupants by the construction of the railway; for each mile of railway that it may construct in said Territory, said payments to be made in installments of five hundred dollars as each ten miles of road is graded: Provided, That if the general council of either of the nations or tribes through whose lands said railway may be located shall, within four months after the filing of maps of definite location as set forth in section six of this act dissent from the allowance hereinbefore provided for, and shall certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nation or tribe under the provisions of this act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: Provided Further, That the amount awarded or adjudged to be paid by said railway company for said dissenting nation or tribe would be entitled to receive under the foregoing provision. Said company shall also pay, so long as said Territory is owned and occupied by the Indians, to the Secretary of the Interior, the sum of fifteen dollars per annum for each mile of railway it shall construct in the said Territory. The money paid to the Secretary of the Interior under the provisions of this act shall be apportioned by him, in accordance with the laws and treaties now in force, between the United States and said nations and tribes, according to the number of miles of railway that may be constructed by said railway company through their lands: Provided, That Congress shall have the right, so long as said lands are occupied and possessed by said nation and tribes, to impose such additional taxes upon said railroad as it may deem just and proper for their benefit; and any Territory or State hereafter formed, through which said railway shall have been established, may exercise the like power as to such

part of said railway as may lie within its limits. Said railway company shall have the right to survey and locate its railway immediately after the passage of this act."

These defendants allege farther that such estate in and to said lands, and such right to the full and free possession and use thereof as was vested in the plaintiff The Choctaw, Oklahoma & Gulf Railway Company and its assigns, by said Acts of the Congress, were granted to and acquired by said plaintiff to be held and used in conformity with the provisions of the Acts of Congress relating to or affecting the said Choctaw Coal and Railway Company, and not otherwise, one of which provisions was and is that any Territory or State thereafter formed through which said railway shall have been established may exercise the power to impose taxes upon such part of said railway as may lie within its limits.

That section 5 of the said Act of August 24, 1894, entitled "An Act to authorize purchasers of the property and franchises of the Choctaw Coal and Railway Company to organize a corporation and to confer upon the same all the powers, privileges, and franchises vested in that company," and containing the reservation hereinabove stated, is in the words and figures following:

"Sec. 5. That the said corporation, when organized as hereinbefore provided, shall have and possess perpetual succession and shall be able to sue and be sued, plead and be impleaded, in all courts of record and elsewhere, and shall have power to ordain, establish, and put in execution such by-laws and regulations as shall be proper, necessary, or convenient for the government of the said corporation, not being contrary to the Constitution and laws of the United States, and generally to do all and singular the matters and things which shall be necessary or convenient to enable the said company to maintain, use, and operate their railroads and mines which it may become possessed of by virtue hereof in conformity with the provisions of the Acts of Congress relating to or affecting the Choctaw Coal and Railway Company."

These defendants answering farther *admit* that the said defendant City of Holdenville, acting by and through its clerk, and proceeding under the terms of said Act of the Legislature of Oklahoma, has certified to the defendant B. W. Mackey as County Treasurer of Hughes County, Oklahoma, a certain installment and interest thereon of said assessment against the property of the plaintiffs, that is to say, against the said



quarter block districts in said blocks 33½, 44½, 52½, 68½ and 78½, to be placed upon the delinquent tax list of said County of Hughes and collected as other delinquent taxes are collected; and that this defendant B. W. Mackey as such County Treasurer and in pursuance of his official duty, did intend, and did advertise that he would, on November 4th, 1912, make a sale of the said quarter-blocks for the amount of said installment and interest thereon of said assessment, so levied against the same.

## II.

And answering farther and for a second and separate defense to the plaintiffs' bill of complaint herein, these defendants allege that the plaintiffs ought not to be permitted to say that so much of the right of way and station grounds as is included in said quarter block districts is not subject to the assessment in said bill of complaint described, or that said assessment upon said quarter block districts is void, or to contest the validity of such assessment upon any or all of the grounds or for any or all of the reasons, complaints and objections set forth in their bill of complaint herein, because these defendants allege the fact to be that such proceedings were had by the Mayor and Council of the said City of Holdenville for the making of said work of improvement, appraisalment and apportionment of benefits and costs thereof, as that the Mayor and Council of said City did upon the return of the report of the board of appraisers showing their appraisalment and apportionment of benefits to the several lots and tracts of land mentioned and described therein, including so much of said plaintiffs' right of way and station grounds as was covered and included within said quarter block districts, appoint a time and place for holding a session to hear any complaints or objections that the said plaintiffs or others might make concerning the appraisalment and apportionment aforesaid as to any of such lots or tracts of land, and did give notice of such session and of the time and place of holding the same and did cause the city clerk to have such notice published in a newspaper published and of general circulation in said city, and which session at said time and place and for the purpose of hearing any complaint or objection concerning the appraisalment and apportionment of benefits as to any of such lots or tracts of land was duly held by the Mayor and Council of said city: and notwithstanding the plaintiffs were required to take notice of all that was done by the The City of Holdenville, the Mayor and Council, and officers of said city touching said improvement and assessment, and notwithstanding they had full knowledge of such proceedings and the making



of such improvement and that it was intended by said City Mayor and Council to assess such part of their said right of way and station grounds as did abut upon the said improvement for the payment of a portion of the cost of such improvement and that such assessment would thereby become a lien thereon, the plaintiffs and each of them did fail and neglect to appear at such session to make complaint or objection concerning said appraisalment and apportionment, and did fail to make any complaint or objection to said Mayor and Council of said city at any time or place concerning said appraisalment and apportionment of benefits to so much of their said right of way and station grounds as was included by the said Mayor and Council in said quarter block districts for the purpose of such appraisalment and apportionment and assessment, but remained silent and acquiesced in all the proceedings of said Council in relation to the making of said improvement during the progress thereof and of the making of said appraisalment and apportionment and of said assessment, and until the filing of their bill of complaint herein; and that they did not within sixty days after the passage by the Mayor and Council of said city of the ordinance in their bill of complaint herein mentioned, making such final assessment, bring any action or suit to set aside such assessment or to enjoin the levying or collecting of said assessment or contesting the validity of said assessment, upon any or all of the grounds or for any or all of the reasons, complaints or objections now in their bill of complaint herein set forth; that said ordinance making said final assessment was passed by the said City Council and approved by the Mayor thereof on the 25th day of August, 1910, and that the plaintiffs' bill of complaint herein was not filed and their action herein commenced until, to-wit, the ..... day of ....., 1912. That under and by virtue of an Act of the Legislature of the State of Oklahoma, entitled "An Act to provide for the improvement of streets and other public places within cities of the first class, by grading, paving, macadamizing, curbing, guttering and draining the same and declaring an emergency," approved on the 17th day of April, 1908, pursuant to which Act the said improvements were made and the said assessment levied, in plaintiffs' bill of complaint complained of, it is among other things provided as in Section 7 of said Act set forth (a copy of which is here set out for the convenience of the court) in the words and figures following:

"Sec. 7. No suit shall be sustained to set aside any such assessment or to enjoin the mayor and council from making any such improvement, or levying or collecting any such assessments, or issuing such bonds, or provid-

ing for their payment, as herein authorized, or contesting the validity thereof on any ground, or for any reason other than for the failure of the city council to adopt and publish the preliminary resolution provided for in section two in cases requiring such resolution and its publication, and to give the notice of the hearing on the return of the appraisers provided for in section five, unless such suit shall be commenced within sixty (60) days after the passage of the ordinance making such final assessment; provided, that in the event that any special assessment shall be found to be invalid or insufficient in whole or in part, for any reason whatsoever, the city council may, at any time, in the manner provided for levying an original assessment, proceed to cause a new assessment to be made and levied, which shall have like force and effect as an original assessment."

That by reason of the premises the said plaintiffs are forever precluded, barred and estopped from making said objection and grounds of objection and complaint in their bill of complaint herein set forth concerning said final assessment, and from contesting the validity thereof upon any ground or for any reason in their bill of complaint herein set forth.

*Wherefore*, these defendants ask that plaintiffs' bill may be dismissed at plaintiffs' cost.

CLARK J. TISDEL,  
M. D. LIBBY,  
*Solicitors for defendants.*

Endorsed: Filed Mar. 3, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 3rd day of March, A. D. 1913, the defendants Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, constituting the firm of Spitzer, Rorick & Company and Madison G. Baldwin filed their answer herein, which is in words and figures as follows:

**Answer of Defendants H. C. Rorick, A. L. and C. B. Spitzer and M. G. Baldwin.**

The joint and several answer of Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, constituting the firm of Spitzer, Rorick & Company, and Madison G. Baldwin, four of the defendants to the bill of complaint of The Choctaw, Oklahoma & Gulf Railroad Company, and The Chicago, Rock Island & Pacific Railway Company, plaintiffs.

These defendants, for answer to said bill of complaint, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say: They

*Admit* that the defendants Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer are partners in trade, doing business under and in the name of Spitzer, Rorick & Company, and do claim as such partners to have an interest in a portion of the bonds issued by the said City of Holdenville under the terms of the Act of the Legislature of Oklahoma in payment of said paving and street improvement, which assessment was levied against certain property as in plaintiffs' bill of complaint alleged, and that the defendant Madison G. Baldwin claims to have an interest in a portion of such bonds so issued by the said City of Holdenville; and these defendants *admit* that they are each and all citizens of the State of Ohio and residents of the City of Toledo in said state.

*Admit* the corporate capacities, citizenship and residences of the plaintiffs as in the bill of complaint herein alleged, and that the defendant B. W. Mackey is the duly elected, qualified and acting treasurer of Hughes County, in the State of Oklahoma, and a resident and citizen of said Hughes County in said State and said Eastern District of Oklahoma; and that the defendant, The City of Holdenville, is a municipal corporation and city of the first class, organized and existing under the laws of the State of Oklahoma, and is located in said Hughes County, Oklahoma, in said Eastern District of Oklahoma.

*Admit* that this suit is an action of a civil nature; that the matter in dispute herein exceeds, exclusive of interest and costs, the sum and value of Three Thousand Dollars (\$3000.00); that the controversy herein is a controversy wholly between citizens of different States and a corporation existing under and by virtue of an Act of Congress.

*Admit* that on the 28th day of November, 1887, there was organized under and pursuant to the laws of the State of Minnesota, a corporation called, "Choctaw Coal & Railway Company," and which was empowered, as in plaintiffs' bill of complaint alleged.

*Admit* that by an Act of Congress approved on, to-wit, February 18, 1888, the said Choctaw Coal & Railway Company was empowered and authorized to construct and maintain a railway, telegraph and telephone line, and also to construct and maintain a branch line of railway through and be-

tween the points in what was then Indian Territory, as in plaintiffs' bill of complaint alleged.

*Admit* that pursuant to its charter and the said Act of Congress, the said Choctaw Coal & Railway Company proceeded to develop coal mines under the leases and at the places as in plaintiffs' bill of complaint alleged, and to construct a railway line connected therewith for the transportation of the products of such mines; that in the prosecution of such work said corporation became insolvent, and that the United States Government, by an Act approved by Congress on, to-wit, August 24, 1894, empowered the purchasers of the rights of way, railroads, mines, coal leasehold estates, and other property, and the franchises of the said Choctaw Coal & Railway Company, at any sale made under or pursuant to any decree of court, to form a corporation empowered as in plaintiffs' bill of complaint alleged, and vested with all the rights, franchises and properties as in plaintiffs' bill of complaint alleged; and that pursuant to said last named Act of Congress there was organized the complaining corporation, The Choctaw, Oklahoma & Gulf Railroad Company; but these defendants aver that they are without knowledge that it became necessary for the United States Government to make some provision for the work undertaken by the Choctaw Coal & Railway Company to be carried on, or that it should be carried on in order that the leased mines might be operated for the benefit of the Indians as wards of the United States or for the purpose of the development of commerce in the said Territories and among the several States of the Union, and are without knowledge that, to accomplish said purposes or any of them, or to secure the operation of said mines for the benefit of the Indians or in the interests of inter-state commerce, the United States Government by said Act of Congress approved August 24, 1894, did empower the purchasers of the rights of way, railroads, mines, coal leasehold estates and other property, and the franchises of the Choctaw Coal & Railway Company, as in plaintiffs' bill of complaint alleged.

*Admit* that the United States Government by an Act of Congress approved, to-wit, April 24, 1896, duly recognized the Choctaw, Oklahoma & Gulf Railroad Company pursuant to the Act approved August 24, 1894, and further prescribed the rights, powers and duties thereof, as in plaintiffs' bill of complaint alleged.

*Admit* that pursuant to and in accordance with the Acts of Congress described, The Choctaw, Oklahoma & Gulf Railroad Company purchased and became possessed of and vested with all the rights, title, interest, property, possession,

claim and demand in law and in equity, in and to such rights of way, railroads, mines, coal leasehold estates, and with the rights, powers, immunities, privileges, and franchises which had been granted to said Choctaw Coal & Railway Company, or conferred upon it, by any Act of Congress, or which it possessed by virtue of its charter under the laws of the State of Minnesota.

*Admit* that prior to March 24, 1904, The Choctaw, Oklahoma & Gulf Railroad Company, pursuant to and in accordance with its rights, powers, privileges and duties under and by virtue of its charter and the various Acts of Congress heretofore referred to, proceeded to construct and acquire and to become possessed of and did construct and acquire and become possessed of a line of railway extending from a point on the west bank of the Mississippi River, at or near Hopefield in Crittendon County in the State of Arkansas, opposite Memphis, Tennessee, by way of Little Rock, Pulaski County, Arkansas, to a point on the boundary line between the Territory of Oklahoma and the State of Texas, at or near Texola in Greer County, Oklahoma, as in plaintiffs' bill of complaint alleged.

*Admit* that pursuant to and in accordance with its rights, powers, privileges and duties, and by virtue of its charter and the various Acts of Congress, the said The Choctaw, Oklahoma & Gulf Railroad Company did locate its said railway from certain leased coal veins of the said Choctaw Coal & Railway Company to an intersection with the Atchison, Topeka & Santa Fe Railway, as provided in said Act of Congress of February, 18, 1888, and did file its maps, and do all things by law required to acquire a right-of-way and station grounds therefor, and that as a part of such right-of-way and station grounds the said The Choctaw, Oklahoma & Gulf Railroad Company was granted under the terms and by virtue of said Act of Congress, the following described tract of land, to-wit:

Beginning at a point three hundred two and five-tenths (302.5) feet northwesterly from the intersection of the main track of said railway company with the west line of section eighteen (18) township seven (7) north, range nine (9) east, measured along said main track; thence northeasterly at right angles one hundred and fifty (150) feet; thence southeasterly at right angles parallel to and one hundred and fifty (150) feet easterly from the center of said main track; three thousand (3000) feet; thence southwesterly at right angles three hundred (300) feet; thence northwesterly at right angles, parallel to and one

hundred and fifty (150) feet westerly from the center of said *mine* track, three thousand (3000) feet; thence north-easterly, at right angles one hundred and fifty (150) feet to the point of beginning, lying and being in section thirteen (13), township seven (7) north, range eight (8) east, and section eighteen (18), township seven (7) north, range nine (9) east, Hughes County, Oklahoma;

and that the said, The Choctaw, Oklahoma & Gulf Railroad Company was vested with an estate in and to the said described premises under and by virtue of said Acts of Congress, all as in plaintiffs' bill of complaint herein set forth.

*Admit* that on, to-wit, March 24, 1904, The Choctaw, Oklahoma & Gulf Railroad Company, being thereunto duly authorized by an Act of Congress, leased to The Chicago, Rock Island & Pacific Railway Company, one of the complainants herein, all its railway lines and appurtenances thereto, including that tract of land hereinabove particularly described and located in section thirteen (13), township seven (7) north, range eight (8) east, and section eighteen (18), township seven (7) north, range nine (9) east, in Hughes County, Oklahoma, and equipment thereof, for a period of nine hundred ninety-nine (999) years; and that The Chicago, Rock Island & Pacific Railway Company, under the several Acts of Congress in the bill of complaint herein mentioned, and by virtue of its chartered rights under the laws of the States of Illinois and Iowa, under which it is incorporated, had full power, right, and authority to acquire and hold, by lease, said railway lines, as well as to construct, acquire, hold, build and operate all the other lines which it now owns and operates within the State of Oklahoma: but these defendants say that they are without knowledge that The Chicago, Rock Island & Pacific Railway Company, under and by the terms of said lease, succeeded to all the rights, powers, facilities, franchises, properties and interests of the said The Choctaw, Oklahoma & Gulf Railroad Company in and to said railway lines, and to the full and free use and possession of said railway lines, properties and rights of way, including the premises hereinabove particularly described.

*Admit* that the plaintiffs have constructed and do now maintain on and upon the said rights of way and on and upon the premises hereinabove particularly described, railway tracks, both main and siding, composed of ballast, ties and steel, station houses, freight depots, and other necessary appurtenances which are in constant use in the performance of the charter powers of the plaintiffs.



*Admit* that the premises hereinabove particularly described, or a portion thereof, are contiguous to and abut upon Oklahoma avenue, and that the same is a street or thoroughfare of the defendant, The City of Holdenville.

*Admit* that The City of Holdenville, under and by virtue of an Act of the Legislature of the State of Oklahoma, entitled, "An Act to provide for the improvement of streets and other public places within cities of the first class, by grading, paving, macadamizing, curbing, guttering and draining the same, and declaring an emergency," approved April 17, 1908, as amended by the Act of said Legislature approved May 23, 1909, and acting by and through its Mayor and Councilmen, did on the 20th day of January, 1910, adopt a certain resolution numbered 20, declaring it necessary to grade, pave, curb, gutter and drain certain streets and avenues, or parts of streets and avenues, of the said City of Holdenville, including a part of said Oklahoma avenue, to-wit, that part of Oklahoma avenue extending approximately 1461 feet in a southeasterly direction from the point of intersection of the Frisco and Rock Island rights of way at the Union Station to the southeast side of Oak street in said city, and directing a publication thereof in a newspaper published and having a general circulation within said city, as in plaintiffs' bill of complaint alleged; and admit that thereafter such other proceedings by the Mayor and Councilmen of said City, agents, servants and appointees, took place and were had, touching the making of said improvement, and the appraisalment and apportionment of benefits to the property liable for the cost of such improvement, and the assessment of the cost thereof against such property, as that said improvement was made, an appraisalment and apportionment of the benefits to such property had and confirmed, and an ordinance passed levying assessments in accordance with such appraisalment and apportionment as so confirmed against the several lots and tracts of land liable therefor; and that proceedings were had in that behalf as set forth in the "fourteenth" and "fifteenth" subdivisions of plaintiffs' bill of complaint herein; and

*Admit* farther that certain tracts of land in said appraisalment and apportionment of benefits and in said ordinance levying assessments described, to-wit, the north quarter-block of block numbered 33 &  $\frac{1}{2}$ , the east quarter-block of block numbered 33 &  $\frac{1}{2}$ , the north quarter-block of block numbered 44 &  $\frac{1}{2}$ , the east quarter-block of block numbered 44 &  $\frac{1}{2}$ , the north quarter-block of block numbered 52 &  $\frac{1}{2}$ , the east quarter-block of block numbered 52 &  $\frac{1}{2}$ , the east quarter-block of block numbered 68 &  $\frac{1}{2}$ , the north quarter-block of block



numbered 68 & 1/2, and the north quarter-block of block numbered 78 & 1/2, were so assessed in the amounts in plaintiffs' bill of complaint alleged, and that such tracts of land are and do constitute a part of the plaintiffs' right of way and station grounds, to-wit, that tract of land in plaintiffs' bill and hereinbefore particularly described.

And answering farther these defendants *deny* that there has been no sufficient determination of proper quarter block districts of that portion of plaintiffs' said station grounds fronting and abutting upon said improvement, for the purpose of appraisalment and apportionment of benefits and assessment of costs in accordance with such appraisalment and apportionment, as provided in and by said Act of the Legislature of Oklahoma approved April 17, 1908, as amended by Act approved on May 23, 1909; and although these defendants admit that a certain map referred to in the proceedings of the Mayor and Councilmen in plaintiffs' bill set forth as having been adopted by said Mayor and Council of said City of Holdenville, was never recorded otherwise than that said map itself so adopted by said Mayor and Council did constitute a part of the record of the proceedings of said Mayor and Council, by which they did include so much of said station grounds in proper quarter block districts for the purpose of appraisalment and assessment, yet they allege that such map was not subject or required to be made of record otherwise under the laws of the State of Oklahoma.

And further answering in this behalf these defendants allege that said specifically described tract of land, 300 feet in width and 3000 feet in length, extends from said point in said section 13 in a southeasterly direction, and that the larger portion thereof lies within the corporate limits of the said City of Holdenville, and constitutes the railway yards and station grounds in that city of the complainant, The Choctaw, Oklahoma & Gulf Railroad Company; that Oklahoma avenue in said city runs parallel and is contiguous to the said station grounds, along the northeasterly side thereof, the northeasterly boundary line of said tract constituting said station grounds and the southwesterly boundary line of Oklahoma avenue being identical; and that Choctaw avenue in said city runs parallel and is contiguous to said tract constituting said station grounds along the southwesterly side thereof, the southwesterly boundary line of said tract and the northeasterly boundary line of said Choctaw avenue being identical, and that the said tract of land occupies all the space between said Oklahoma avenue on the northeast side thereof and Choctaw avenue on the southwest side thereof in the said City of Hold-

enville. That so much of said Oklahoma avenue as was so improved by grading, paving, curbing, guttering and draining thereof, and to which said station grounds are contiguous as aforesaid, is approximately 1461 feet in length, and the width of said improvement extends 30 feet outward from the northeasterly boundary line of said station grounds throughout the entire 1461 feet of the length thereof; that blocks numbered respectively 34, 44, 53, 68 and 79 on the official plat of said city now on file in the office of the Register of Deeds of said Hughes County, each approximately 300 feet square, front on said Oklahoma avenue on the opposite side thereof from said station grounds; and that intervening streets, to-wit, those designated on the said official plat as Echo, Creek, Cedar, and Oak, each 80 feet in width, extend in a northeasterly direction from said Oklahoma avenue, and in a southwesterly direction from said Choctaw avenue. That under and by virtue of the Acts of the Legislature of the State of Oklahoma mentioned in plaintiffs' bill of complaint herein, it is provided, among other things, that,

"if any portion of the property abutting upon such improvement shall not be platted into lots and blocks, the Mayor and Council shall include such property in proper quarter block districts for the purpose of appraisalment and assessment."

And these defendants allege farther that such portion of plaintiffs' said right of way and station grounds as abutted upon such improvement throughout the length of 1761 feet thereof was not platted into lots and blocks prior to the time it became necessary to the making of the appraisalment and assessment in plaintiffs' bill of complaint herein mentioned; and that the Mayor and Council of said City of Holdenville, prior to the said appraisalment and assessment and acting pursuant to said provision of the said Acts of the Legislature of the State of Oklahoma, did include in proper quarter block districts for the purpose of such appraisalment and assessment, all that part of said station grounds particularly described as follows, to-wit:

All that part of said right of way and station grounds lying as aforesaid between Oklahoma and Choctaw avenues in said city and extending from the southeasterly side of the area of intersection of the said right of way and station grounds with the right of way and station grounds of the St. Louis and San Francisco Railway Company, a distance of 1761 feet approximately, in a southeasterly direction between said avenues to the northwest-

erly boundary line of Gulf street in said city, as such line is extended in continuation thereof across said right of way and station grounds between said Oklahoma and Choctaw avenues;

and in that behalf did direct and cause the city engineer of said city to plat and map into proper quarter block districts such part of said station grounds; and did approve and adopt such map. That said map so adopted by said Mayor and Council did and does show the precise location of each of such quarter block districts and the precise dimensions thereof; and these defendants aver farther that so much of said right-of-way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 33 and 34 on the official plat of said city, and between the northwesterly boundary line of said Echo street as extended across said station grounds and right-of-way and the southeasterly boundary line of the area of intersection of the respective rights of way and station grounds of the St. Louis and San Francisco Railway Company and The Choctaw, Oklahoma and Gulf Railroad Company was platted and mapped and numbered as said block 33 $\frac{1}{2}$ .

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 44 and 45 on the official plat of said city, and between the northwesterly boundary line of said Creek street as extended across said station grounds and right of way and the southeasterly boundary line of said Echo street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 44 $\frac{1}{2}$ .

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 52 and 53 on the official plat of said city, and between the northwesterly boundary line of said Cedar street as extended across said station grounds and right of way and the southeasterly boundary line of said Creek street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 52 $\frac{1}{2}$ .

That so much of said right of way and station grounds as lies between the said opposite blocks, to-wit, blocks numbered 68 and 69 on the official plat of said city, and between the northwesterly boundary line of said Oak street as extended across said station grounds and right of way and the southeasterly boundary line of said Cedar street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 68 $\frac{1}{2}$ .

That so much of said right of way and station grounds as lies between said opposite blocks, to-wit, blocks numbered 78 and 79 on the official plat of said city, and between the northwesterly boundary line of said Gulf street as extended across said station grounds and right of way and the southeasterly boundary line of said Oak street as extended across said station grounds and right of way, was platted and mapped and numbered as said block 78½.

That each of said blocks, 33½, 44½, 52½, 68½ and 78½, is of the same size as the blocks on the northeasterly and southwesterly sides thereof, to-wit, 300 feet square, as near as may be.

That so much of said station grounds and right of way as lies between said blocks 33½ and 44½, being of the width of said Echo street and in continuation thereof, and as lies between said blocks 44½ and 52½, being of the width of Creek street and in continuation thereof, and so much thereof as lies between said blocks 52½ and 68½, being of the width of Cedar street and in continuation thereof, and so much thereof as lies between said blocks 68½ and 78½, being of the width of said Oak street and in continuation thereof, was excluded from said quarter block districts.

That the northeast half of each of said blocks 33½, 44½, 52½, 68½ and 78½ was platted and mapped as aforesaid into quarter block districts by dividing such half into equal parts by a line extending across the same to the center of such block at right angles to the northeast boundary line thereof. That inasmuch as said Oklahoma avenue extends in a southeasterly direction along the front of said blocks 33½, 44½, 52½, 68½ and 78½, and the exterior lines of said quarter block districts are on the two sides parallel to said Oklahoma avenue, and on the other two sides at right angles to said Oklahoma avenue, such quarter block districts were under said appraisalment and apportionment and in said ordinance levying said assessment described with reference to the points of the compass, that is to say, the most northerly quarter block in each of said blocks was described as "North quarter block" and the most easterly quarter block in each of said blocks was described as the "East quarter block."

They *admit* that under and by virtue of said proceedings of the Mayor and Council of said City of Holdenville, it was sought to attach a lien to so much of plaintiffs' said tract of land as is included within said quarter block districts for the payment of the assessment levied under said ordinance against such quarter block districts for the payment of a portion of

the costs of such improvement; but they *deny* that there is no legal plat, of any tracts of land within said City of Holdenville, wherein is included any blocks designated as  $33\frac{1}{2}$ ,  $44\frac{1}{2}$ ,  $52\frac{1}{2}$ ,  $68\frac{1}{2}$  and  $78\frac{1}{2}$ , but on the contrary allege that a legal plat of such tracts of land does exist and that in truth and in fact such blocks do exist.

Answering further, these defendants *deny* that the reversionary interest in and to said premises hereinbefore specifically described and in part included within said quarter-block districts, shown by said map, is vested in the Government of the United States; on the contrary, these defendants allege that the reversionary interest, if any, in and to said lands is vested in the nation or tribe of Indians from which such lands were taken, and that by section 2 of said Acts of Congress approved on, to-wit, February 18, 1888, and the amendment thereof approved on, to-wit, February 13, 1889, granting to the said Choctaw Coal & Railway Company the lands constituting its right of way and station grounds, it is provided that when any portion of the lands so granted shall cease to be so used, such portion shall revert to the nation or tribe of Indians from which the same shall be taken. That said section 2 of said Act (here set out for the convenience of the court) is in the words and figures following:

“Sec. 2. That said corporation is authorized to take and use for all purposes of railway, and for no other purpose, a right of way one hundred feet in width through said Indian Territory for said main line and branch of the Choctaw Coal and Railway Company; and to take and use a strip of land two hundred feet in width, with a length of three thousand feet, in addition to right of way, for stations, for every ten miles of road, with the right to use such additional ground where there are heavy cuts or fills as may be necessary for the construction and maintenance of the road-bed, not exceeding one hundred feet in width on each side of said right of way, or as much thereof as may be included in said cut or fill; Provided, That no more than said addition of land shall be taken for any one station: Provided further, That no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railroad, telegraph, and telephone lines; and when any portion thereof shall cease to be so used, such portion shall revert to the nation or tribe of Indians from which the same shall be taken.”

These defendants *deny* that the Government of the United States, or the nation or tribe of Indians from which said lands were taken, is vested with any reversionary interest in and to said lands, as against the right of the Congress to impose taxes and liens therefor upon said lands, or as against the right of the State of Oklahoma to impose taxes and liens therefor upon said lands, whether for general revenue or for the payment of assessment for local improvements; and *deny* that the estate vested in plaintiffs in and to said tract of land is such an estate as that said land is not subject under the law to any assessment on account of said paving and street improvement; and *deny* that there is no authority of law for the assessment of so much of said specifically described tract of land as was by the Mayor and Council of said City of Holdenville included in said quarter-block districts for the purpose of appraisement and assessment; on the contrary, these defendants allege that the said tract of land or so much thereof as was by the said Mayor and Council included within said quarter-block districts was and is subject to the assessment so levied against it by the Mayor and Council of the said City of Holdenville and that plaintiffs' estate in them vested as averred in plaintiffs' bill of complaint was and is subject to such assessment of said land; and allege further that by section 5 of said Act of the Congress, approved on, to-wit, February 18, 1888, it was provided that Congress shall have the right so long as said lands are occupied and possessed by said nations and tribes of Indians, to impose such additional taxes upon said railroad as it might deem just and proper for their benefit, and that any Territory or State thereafter formed through which said railway shall have been established, may exercise the like power as to such part of said railway as may lie within its limits. That section 5 of said Act (here set out for the convenience of the court) is in the words and figures following:

"Sec. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands the said railway may be located, the sum of fifty dollars, in addition to compensation provided for in this act, for property taken and damages done to individual occupants by the construction of the railway; for each mile of railway that it may construct in said Territory, said payments to be made in installments of five hundred dollars as each ten miles of road is graded: Provided, That if the general council of either of the nations or tribes through whose lands said railway may be located shall, within four months after the filing of maps of definite location



as set forth in section six of this act dissent from the allowance thereinbefore provided for, and shall certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nation or tribe under the provisions of this act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: Provided further, That the amount awarded or adjudged to be paid by said railway company for said dissenting nation or tribe would be entitled to receive under the foregoing provision. Said company shall also pay, so long as said Territory is owned and occupied by the Indians, to the Secretary of the Interior, the sum of fifteen dollars per annum for each mile of railway it shall construct in the said Territory. The money paid to the Secretary of the Interior under the provisions of this act shall be apportioned by him, in accordance with the laws and treaties now in force, between the United States and said nations and tribes, according to the number of miles of railway that may be constructed by said railway company through their lands: Provided, That Congress shall have the right, so long as said lands are occupied and possessed by said nations and tribes, to impose such additional taxes upon said railroad as it may deem just and proper for their benefit; and any Territory or State hereafter formed, through which said railway shall have been established, may exercise the like power as to such part of said railway as may lie within its limits, said railway company shall have the right to survey and locate its railway immediately after the passage of this act."

These defendants allege farther that such estate in and to said lands, and such right to the full and free possession and use thereof as was vested in the plaintiff The Choctaw, Oklahoma & Gulf Railway Company and its assigns, by said Acts of the Congress, were granted to and acquired by said plaintiff to be held and used in conformity with the provisions of the Acts of Congress relating to or affecting the said Choctaw Coal and Railway Company, and not otherwise, one of which provisions was and is that any Territory or State thereafter formed through which said railway shall have been established may exercise the power to impose taxes upon such part of said railway as may lie within its limits.

That section 5 of the said Act of August 24, 1894, entitled "An Act to authorize purchasers of the property and fran-



chises of the Choctaw Coal and Railway Company to organize a corporation and to confer upon the same all the powers, privileges, and franchises vested in that company," and containing the reservation hereinabove stated, is in the words and figures following:

"Sec. 5. That the said corporation, when organized as hereinbefore provided, shall have and possess perpetual succession and shall be able to sue and be sued, plead and be impleaded, in all courts of record and elsewhere, and shall have power to ordain, establish, and put in execution such by-laws and regulations as shall be proper, necessary, or convenient for the government of the said corporation, not being contrary to the Constitution and laws of the United States, and generally to do all and singular the matters and things which shall be necessary or convenient to enable the said company to maintain, use, and operate their railroads and mines which it may become possessed of by virtue hereof in conformity with the provisions of the Acts of Congress relating to or affecting the Choctaw Coal and Railway Company."

These defendants answering farther *admit* that the said defendant City of Holdenville, acting by and through its clerk, and proceeding under the terms of said Act of the Legislature of Oklahoma, has certified to the defendant B. W. Mackey as County Treasurer of Hughes County, Oklahoma, a certain installment and interest thereon of said assessment against the property of the plaintiffs, that is to say, against the said quarter block districts in said blocks 33½, 44½, 52½, 68½, and 78½, to be placed upon the delinquent tax list of said County of Hughes, and collected as other delinquent taxes are collected; and that said defendant B. W. Mackey as such County Treasurer and in pursuance of his official duty, did intend, and did advertise that he would, on November 4, 1912, make a sale of the said quarter blocks for the amount of said installment and interest thereon of said assessment, so levied against the same.

## II.

And answering farther and for a second and separate defense to the plaintiffs' bill of complaint herein, these defendants allege that the plaintiffs ought not to be permitted to say that so much of the right of way and station grounds as is included in said quarter block districts is not subject to the assessment in said bill of complaint described, or that said assessment upon said quarter block districts is void, or to contest the validity of such assessment upon any or all of

the grounds or for any or all of the reasons, complaints and objections set forth in their bill of complaint herein, because these defendants allege the fact to be that such proceedings were had by the Mayor and Council of the said City of Holdenville for the making of said work of improvement, appraisalment and apportionment of benefits and costs thereof, as that the Mayor and Council of said city did upon the return of the report of the board of appraisers showing their appraisalment and apportionment of benefits to the several lots and tracts of land mentioned and described therein, including so much of said plaintiffs' right of way and station grounds as was covered and included within said quarter block districts, appoint a time and place for holding a session to hear any complaints or objections that the said plaintiffs or others might make concerning the appraisalment and apportionment aforesaid as to any of such lots or tracts of land, and did give notice of such session and of the time and place of holding the same and did cause the city clerk to have such notice published in a newspaper published and of general circulation in said city, and which session at said time and place and for the purpose of hearing any complaint or objection concerning the appraisalment and apportionment of benefits as to any of such lots or tracts of land was duly held by the Mayor and Council of said city; and notwithstanding the plaintiffs were required to take notice of all that was done by *the* The City of Holdenville, the Mayor and Council, and officers of said city touching said improvement and assessment, and notwithstanding they had full knowledge of such proceedings and the making of such improvement and that it was intended by said City Mayor and Council to assess such part of their said right of way and station grounds as did abut upon the said improvement for the payment of a portion of the cost of such improvement and that such assessment would thereby become a lien thereon, the plaintiffs and each of them did fail and neglect to appear at such session to make complaint or objection concerning said appraisalment and apportionment, and did fail to make any complaint or objection to said Mayor and Council of said city at any time or place concerning said appraisalment and apportionment of benefits to so much of their said right of way and station grounds as was included by the said Mayor and Council in said quarter block districts for the purpose of such appraisalment and apportionment and assessment, but remained silent and acquiesced in all the proceedings of said Council in relation to the making of said improvement during the progress thereof and of the making of said appraisalment and apportionment and of said assessment, and until the filing of their bill of

complaint herein; and that they did not within sixty days after the passage by the Mayor and Council of said city of the ordinance in their bill of complaint herein mentioned, making such final assessment, bring any action or suit to set aside such assessment or to enjoin the levying or collecting of said assessment or contesting the validity of said assessment, upon any or all of the grounds or for any or all of the reasons, complaints or objections now in their bill of complaint herein set forth; that said ordinance making said final assessment was passed by the said City Council and approved by the Mayor thereof on the 25th day of August, 1910, and that the plaintiffs' bill of complaint herein was not filed and their action herein commenced until, to-wit, the . . . day of . . . , 1912. That under and by virtue of an Act of the Legislature of the State of Oklahoma, entitled "An Act to provide for the improvement of streets and other public places within cities of the first class, by grading, paving, macadamizing, curbing, guttering and draining the same and declaring an emergency," approved on the 17th day of April, 1908, pursuant to which Act the said improvements were made and the said assessment levied, in plaintiffs' bill of complaint complained of, it is among other things provided as in Section 7 of said Act set forth (a copy of which is here set out for the convenience of the court) in the words and figures following:

"Sec. 7. No suit shall be sustained to set aside any such assessment or to enjoin the mayor and council from making any such improvement, or levying or collecting any such assessments, or issuing such bonds, or providing for their payment, as herein authorized, or contesting the validity thereof on any ground, or for any reason other than for the failure of the city council to adopt and publish the preliminary resolution provided for in section two in cases requiring such resolution and its publication, and to give the notice of the hearing on the return of the appraisers provided for in section five, unless such suit shall be commenced within sixty (60) days after the passage of the ordinance making such final assessment; provided, that in the event that any special assessment shall be found to be invalid or insufficient in whole or in part, for any reason whatsoever, the city council may, at any time, in the manner provided for levying an original assessment, proceed to cause a new assessment to be made and levied, which shall have like force and effect as an original assessment."

That by reason of the premises the said plaintiffs are forever precluded, barred and estopped from making said

objection and grounds of objection and complaint in their bill of complaint herein set forth concerning said final assessment, and from contesting the validity thereof upon any ground or for any reason in their bill of complaint herein set forth.

### III.

And answering farther and for a third and separate defense to plaintiffs' bill of complaint herein, these defendants allege that the plaintiffs ought not to be permitted to say that so much of the right of way and station ground as is included in said quarter block districts is not subject to the assessment in said bill of complaint described, or that said assessment upon said quarter block districts is void, or to contest the validity of such assessment and lien thereof, upon any or all of the grounds or for any and all of the reasons set forth in their bill of complaint herein, because these defendants allege the facts to be that such proceedings were had by the Mayor and Council of the said City of Holdenville for the making of said work of improvement, appraisement and apportionment of benefits and costs thereof, levying of assessments in accordance with such appraisement and apportionment upon the property therein described, including the plaintiffs' said property, for the payment of the cost of said work of improvement, as that the Mayor and Council of said city did on the 20th day of October, 1910, adopt a certain resolution, to-wit, Resolution No. 31, "providing for the issuance of street improvement bonds to pay the cost of paving and otherwise improving streets in Street Improvement District No. 1 of the City of Holdenville, Oklahoma," in the aggregate sum of Eighty-six Thousand, Five Hundred Thirty-two and 05/100 Dollars (\$86,532.05); and that said City of Holdenville did issue such series of bonds of the tenor, denomination and number and with the interest coupons thereto attached, in accordance with and as provided in said resolution; and that for a valuable consideration and before maturity thereof, the defendants, Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, as Spitzer, Rorick & Company aforesaid, did purchase and acquire one of said bonds with the coupons thereto attached, and ever since have been and now are the owners and holders thereof, to-wit: Bond No. 19 in the sum of One Thousand Dollars (\$1000.00) dated the 9th day of September, 1910, due and payable on the 15th day of September, A. D. 1912, with interest thereon from date thereof at the rate of six per cent per annum, evidenced by coupons Nos. 1 and 2 thereto attached, which bond with the coupons thereto attached is in the words and figures following, to-wit:

United States of America, State of Oklahoma, County of Hughes.

Number 19

1,000 Dollars

City of Holdenville

### STREET IMPROVEMENT BOND

District No. 1

Know All Men by These Presents, That the City of Holdenville, in the State of Oklahoma, a City of the first class, for value received hereby acknowledges itself indebted to and promises to pay the bearer the sum of

### ONE THOUSAND DOLLARS

on the 15th day of September, A. D. 1912, with interest thereon from the date hereof until the principal sum shall be due at the rate of Six per cent per annum, payable annually on the 15th day of September of each year, as evidenced by and upon the surrender of the annexed interest coupons as they severally become due: provided that if this bond shall not be paid at maturity, it shall thereafter bear interest at the rate of ten per cent per annum until paid, and both principal and interest are payable in lawful money of the United States of America at the Fiscal Agency of the State of Oklahoma, in the City of New York.

This bond is one of a series of bonds of like date and tenor issued by the City of Holdenville under authority of and in full compliance with "An Act to provide for the improvement of streets and other public places within cities of the first class by grading, paving, macadamizing, curbing, guttering and draining the same and declaring an emergency," approved April 17, 1908, as amended, and in pursuance of resolutions and ordinances of said City duly passed, approved, recorded, authenticated and published, as required by law, for the purpose of procuring the necessary means to pay the cost and expense of improving the following named streets and parts of streets in said City: That portion of Oklahoma Avenue beginning at the intersection of the St. Louis & San Francisco Railroad right of way and the right of way of the Rock Island Railroad right of way at the Union Station and extending to the southeast side of Oak Street; that portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street; that portion of Cedar Avenue beginning on Oklahoma Avenue and extending to the southwest side of Eighth Street; that portion of Creek Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street; that portion of Echo Street be-

ginning on Oklahoma Avenue and extending to the northeast side of Sixth Street; that portion of Sixth Street beginning on Echo Street and extending to Oak Street; that portion of Seventh Street beginning on Creek Street and extending to Oak Street; that portion of Sixth Street beginning at the southeast side of Oak Street and extending to the northwest side of Gulf Street, constituting Street Improvement District No. 1 of said City and is payable solely from assessments which have been legally levied upon the lots and tracks of land benefited by said improvements, which assessments said City of Holdenville undertakes to collect, as by law provided, and the faith, credit, revenues and property of said City are hereby irrevocably pledged for the purpose of carrying out each and every stipulation contained in this bond.

And it is hereby declared and certified that all acts, conditions and things required to be done and to exist precedent to and in making said improvements and levying of said assessments and the issuing of this series of bonds have been properly done, happened and performed, and do exist, in regular and due form, time and manner as required by the Constitution and Laws of the State of Oklahoma, and that the total amount of said assessments or any installment thereof, and of the bonds issued on account of said improvements, including this bond, do not exceed any constitutional or statutory limitations.

In Witness Whereof, The City of Holdenville, by its Mayor and Council, has caused this bond to be signed by its Mayor and attested by its clerk and its corporate seal to be hereto affixed and the interest coupons hereto attached to be signed by the fac-simile signature of its Clerk, and this bond to be dated the 9th day of September, 1910.

F. P. Rutherford, Mayor.

Seal of City

Attest: I. A. Draper, City Clerk.

State of Oklahoma, County of Hughes—ss.

I, I. A. Draper, Clerk of the City of Holdenville, in the County and State aforesaid, do hereby certify that this bond has been regularly and legally issued, that the signatures thereto are genuine, and that said bond has been duly registered in my office.

Witness my hand and official seal this 24 day of October,  
A. D. 1910. (Seal) I. A. Draper,  
Clerk of the City of Holdenville.



No. 19 State of Oklahoma, County of Hughes City of Holdenville Street Improvement Bond District No. 1 1,000 Dollars Interest 6 Per Cent Dated September 9, 1910 Due September 15, 1912 Interest Payable September 15 each year Principal and interest payable at the Fiscal Agency of the State of Oklahoma in the City of New York, N. Y.

No. 2 September 15, 1912.

The City of Holdenville, State of Oklahoma, will pay the bearer Sixty Dollars, at the Fiscal Agency of the State of Oklahoma, in the City of New York, being interest then due on its Street Improvement Bond of Street Improvement District No. 1, dated September 9, 1910.

I. P. Draper, City Clerk.

No. 1 September 15, 1911.

The City of Holdenville, State of Oklahoma, will pay the bearer Sixty Dollars, at the Fiscal Agency of the State of Oklahoma, in the City of New York, being interest then due on its Street Improvement Bond of Street Improvement District No. 1, dated September 9, 1910.

I. P. Draper, City Clerk.

And that for a valuable consideration and before the maturity thereof the defendant Madison G. Baldwin, did purchase and acquire one of said bonds with the coupons thereto attached and ever since has been and now is the owner and holder thereof, to-wit: Bond No. 77 in the sum of One Thousand Dollars (\$1000.00) dated September 9, 1910, due and payable, on the 15th day of September, A. D. 1919, with interest thereon from the date thereof at the rate of six per cent per annum, as evidenced by nine coupons to said bond attached, which bond was of precisely the same tenor as the bond hereinabove set out, differing therefrom only in the date of maturity thereof, and in the times of payments of coupons thereto attached.

That neither of said bonds nor any part thereof, nor the interest thereon nor any part thereof, has been paid by the said City of Holdenville from assessments levied for the payment thereof, or at all, except that the interest represented by said coupons Nos. 1 and 2, has been paid.

And these defendants allege farther that they purchased and paid for said bonds in absolute and full reliance upon the said resolutions and ordinances, map and proceedings, made, passed and approved by the Mayor and Council of the said



City of Holdenville, and the record thereof in the journal of their proceedings, and that all acts, conditions and things required to be done and to exist precedent to the making of said improvement, and the making and levying of said assessment, and the issuance of said bonds, had been properly done, happened and performed, and did exist in regular and due form and manner as required by the laws of the State of Oklahoma, as so stipulated upon the face of said bonds and shown by the journal of said proceedings of the said Mayor and Council, and in good faith and absolute and full reliance upon the silence of the plaintiffs in relation to said proceedings and their acquiescence therein, and especially upon their silence and acquiescence in said ordinance levying assessments as aforesaid upon their said property included within said quarter block districts.

That notwithstanding the plaintiffs were required to take notice of all that was done by the Mayor and Council of the City of Holdenville and officers of said city touching said improvement and assessment and the including of their property in quarter block districts for the purpose of appraisalment and apportionment of the benefits of such improvement thereto, and for the purpose of assessment thereof for the payment of the cost of such improvement, and notwithstanding they had full knowledge of such proceedings and the making of such improvement and that it was intended by said Mayor and City Council to assess such part of their said right of way and station ground as did abut upon said improvement, for the payment of a portion of the cost of such improvement, and that such assessment would thereby become a lien thereon, the plaintiffs and each of them did fail and neglect to appear at such session to make such complaint or objection concerning such appraisalment and apportionment, and did fail to make any complaint or objection to the Mayor and Council of said City at any time or place concerning said appraisalment and apportionment of benefits to so much of their said right of way and station grounds as was included by the said Mayor and Council in said quarter block districts for the purpose of such appraisalment and apportionment and assessment, but remained silent and acquiesced in all the proceedings of said Mayor and Council in relation to the making of said improvement during all the progress thereof, and of the making of such appraisalment and apportionment and of said assessment, until the filing of their bill of complaint herein, and did fail and neglect to take any steps to prevent the making of said assessments upon their said property or to prevent the issuance of said bonds for the payment of the cost of said improvement, but did remain silent and acquiesce

therein, receiving the valuable and lasting benefits of said improvement to their said property, well knowing the said series of bonds, including the said bonds so purchased and now owned by these defendants, were payable solely out of the moneys to be raised by assessment against the property benefited thereby.

That these defendants purchased and paid for said bonds as aforesaid without any notice, knowledge or information that the plaintiffs had any objection to the assessment of their said property for the payment of the cost of said improvement.

That by reason of the premises the said plaintiffs are forever estopped and precluded from making said objection and objections in their bill of complaint herein set forth concerning said final assessment of their said property, and the lien of said assessment thereon, and from contesting the validity thereof, upon any of the grounds or for any of the reasons in their bill of complaint herein set forth.

Wherefore, these defendants ask that plaintiffs' bill may be dismissed at plaintiffs' cost.

CLARK J. TISDEL,

M. D. LIBBY,

*Solicitors for defendants.*

Endorsed: Filed March 3, 1913, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 26th day of April, A. D. 1916, the parties hereto filed Agreed Statement of Facts, which is in words and figures as follows:

#### **Stipulation.**

For the purpose of this cause it is hereby admitted, stipulated and agreed by and between the complainants and the defendants herein, that:

1. The tract of land 300 feet in width and 3,000 feet in length, specifically described in the Bill of Complaint herein, and therein alleged to constitute complainants' right-of-way and station grounds, extends in a northwesterly and southeasterly direction, and the larger portion thereof lies between Oklahoma and Choctaw Avenues, which are avenues within the corporate limits of the said City of Holdenville; and that such portion of said tract constitutes the railway right-of-

way, yards and station grounds of the complainants. Oklahoma Avenue in said city runs parallel and is contiguous to the lands constituting said right-of-way and station grounds along the northeasterly side thereof and said avenue and station grounds have a common boundary line between them. Choctaw Avenue in said city runs parallel and is contiguous to said tract constituting said station grounds along the southwesterly side thereof, and said avenue and station grounds have a common boundary line between them. The said tract of land constituting said station grounds is 300 feet in width and occupies all the space between said Oklahoma Avenue on the northeast side thereof and Choctaw Avenue on the southwest side thereof.

2. The right-of-way of the St. Louis and San Francisco Railroad Company extends in a northeasterly and southwesterly direction, and intersects the right-of-way and said station grounds of the complainants, which runs as aforesaid in a northwesterly and southeasterly direction, and so much of said Oklahoma Avenue, for the improvement of which the assessment was made of which complainants complain, and which was improved as alleged, is 1,461 feet in length, extending from the point of intersection of the northeasterly boundary line of the said station grounds of the complainants and the southeasterly boundary line of the right-of-way and station grounds of the said St. Louis and San Francisco Railroad Company, in a southeasterly direction along the said station grounds of the complainants.

3. The surface improvement of said Oklahoma Avenue, throughout the said 1,461 feet, extends outward a distance of 30 feet from the northeasterly boundary line of said station grounds, and consists of the grading, paving, curbing, guttering and draining of the same.

4. That the said town of Holdenville was incorporated as a municipal corporation and its territory defined by legal subdivisions according to the Government survey, on the 14th day of November, 1898, and such legal subdivisions constituting the territory of the said incorporated town of Holdenville were:

“The Southeast Quarter of the Southeast Quarter of Section Twelve (12), in Township Seven (7), North of Range Eight (8), East of the Indian Meridian;

The East Half of the Northeast Quarter, and the Northeast Quarter of the Southeast Quarter of Section Thirteen (13), in Township Seven (7) North, of Range Eight (8) East of said Meridian;

The South Half of the Southwest Quarter, and the Southwest Quarter of the Southeast Quarter of Section Seven (7), in Township Seven (7) North, of Range Nine (9) East of said Meridian;

The West Half of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter, the North Half of the Southwest Quarter, and the Northwest Quarter, of Section Eighteen (18), in Township Seven (7) North, of Range Nine (9) East of said Meridian;

constituting a tract of land one mile square, according to that Government subdivision.

That the Secretary of the Interior, under and by virtue of the terms of the original Creek agreement, caused to be surveyed, staked and platted, the said town of Holdenville, and did on the 27th day of November, 1901, approve a plat of such survey, a copy of which plat with all the endorsements thereon, is hereto attached, marked "Exhibit A" and made a part of this stipulation.

That that tract of land 300 feet in width and 3,000 feet in length and specifically described in the bill of complaint herein, and therein alleged to constitute complainants' right-of-way and station grounds, did constitute a part of the territory within the corporate limits of the said town of Holdenville as so defined on the 14th day of November, 1898, and ever since has been and is now within the corporate limits of said town, and its location relative to the blocks and streets of said town is correctly delineated and shown on said map, a copy of which, marked "Exhibit A," is hereto attached as aforesaid.

4. That in the proceedings of the Mayor and Council herein mentioned, for the improvement of certain streets and avenues in the said City of Holdenville, and the assessments of lots and blocks in said city for the payment of the cost of such improvement, the references therein contained to streets and avenues, and to lots and blocks other than those comprising said right-of-way and station grounds of the complainants, are the same streets and avenues, lots and blocks, named and numbered, and located precisely the same as shown on said map marked "Exhibit A" as aforesaid; and as to the territory covered by said map marked "Exhibit A," it did, at the time of the proceedings by the Mayor and Council herein mentioned for the improvement of certain streets and avenues in said city, and does now constitute the official map of said City of Holdenville.

5. That wagon crossings over said right-of-way and station grounds of complainants have been installed and maintained for public use for several years on the line of said Echo, Celar and Oak Streets, as shown on the map hereto attached and marked "Exhibit A;" and that on the north side of said Oak Street crossing, a concrete sidewalk has been laid across the right-of-way and station grounds for public use, and on one other of the said three street crossings, preparation by grading has been made on both sides of such crossing to put in sidewalks for public use. Said Creek Street is not open to travel across said station grounds.

6. So much of said tract of land constituting the right-of-way, station grounds and railway yards of the complainants as abuts as aforesaid on said Oklahoma Avenue throughout the said length of 1,461 feet thereof, has constructed thereon the complainants' main and side tracks, passing tracks, house track, passenger and freight depots, express office, cotton platform, grain elevators, and storage houses, all in use, and the said Echo, Creek, Cedar and Oak Streets, and Oklahoma Avenue, are the principal thoroughfares leading from the business center of said city, and from surrounding country to the said main and side tracks, passing tracks, house track, passenger and freight depots, express office, cotton platform, grain elevators, and storage houses, all of which said improvements, except "passing tracks," are located on that portion of said right-of-way and station grounds on the northeast side of the center line thereof. Very much the larger portion of the freight and passenger business done in said City of Holdenville by the complainants is derived from passenger and freight traffic conveyed to and from said station grounds and railway yards over said Oklahoma Avenue, Echo, Creek, Cedar and Oak Streets, and over the improvements on said avenue and streets, for the payment of which the assessments were levied of which complainants complain. That a copy of a plat showing the tracks and other structures and location thereof upon said station grounds and railway yards of complainants abutting on said Oklahoma Avenue, is hereto attached, marked "Exhibit B," and made a part of this stipulation.

7. That the elevator, storage houses, oil warehouse and coal bins shown by said plat rest upon sites used under permits by complainants to persons and companies for use in handling commodities transported over the complainants' lines, and said persons and companies so using said sites also transact thereon a local business in such commodities with

others than the complainants; that said permits are subject to termination on thirty days' notice by either party. And one of complainants' railway tracks on said station grounds and railway yards is constructed along the northeast side of such grounds and yards and in such proximity to that part of Oklahoma Avenue improved as herein shown for the distance of 800 feet in length, as that the one side of the freight car, or cars, standing on any part of such track throughout the said 800 feet, is flush with the edge of said avenue and improvement, so that in loading complainants' freight cars with certain freights for transportation, and in unloading certain freights therefrom, wagons delivering and receiving such freights stand upon the improved portion of such avenue while unloading therefrom into said cars and while loading such wagons out of such cars, and have made such use of said avenue and improvement ever since said improvements were made.

8. Under and by virtue of the Act of the Legislature of the State of Oklahoma, mentioned in complainants' bill of complaint herein, it is provided, among other things, that,

"If any portion of the property abutting upon such improvement shall not be platted into lots and blocks, the Mayor and Council shall include such property in proper quarter block district for the purpose of appraisalment and assessment, as herein provided."

9. That portion of complainants' right-of-way, railway yards and station grounds abutting as aforesaid on said Oklahoma Avenue throughout the length thereof, from the point of intersection of the northeasterly boundary line of said right-of-way and station grounds of the complainants and the southeasterly boundary line of the right-of-way and station grounds of the St. Louis and San Francisco Railroad Company, and lying between said Oklahoma and Choctaw Avenues, had not been platted into lots and blocks, and the Mayor and Council of said City of Holdenville on June 29, 1910, by motion, adopted a map, a copy of which is hereto attached, marked "Exhibit C." That the minutes of said City Council with reference to said map are as follows:

"City Engineer McIntosh presented a map showing the C., R. I. & P. Ry. Co. property to be adopted for the purpose of platting the property in quarter blocks for the purpose of assessing the benefits for paving purposes.

Moved by Reese, seconded by Adams, that the map submitted by the City Engineer be adopted.



Upon a vote of 'aye' and 'nay' by roll call the following vote was recorded. Those voting 'aye,' Adams, Bailey, Hyde, Pickens, Reese, Taylor. Those voting 'nay,' none. Absent, Cornish, Nix.

Motion declared carried and map adopted."

That on the original of said map the lines, showing the direction of the cardinal points of the compass, the five perpendicular lines in the center of each of the blocks thereon numbered 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$ , 78 $\frac{1}{2}$ , and the dollar signs followed by figures appearing therein, are in pencil, and attached thereto are certain affidavits and endorsements, copies of which are attached to said exhibit; that said affidavits and endorsements were attached to and made on said original plat after January 27, 1913. That upon said map the side lines of said Echo, Creek, Cedar and Oak Streets as the same exist in the City of Holdenville are projected across said right-of-way and station grounds. That said map was made and adopted in the manner aforesaid for the purpose of subdividing said right-of-way and station grounds into proper quarter block districts for the purpose of assessing the cost of said street improvements.

10. Inasmuch as said Oklahoma Avenue extends in a southeasterly and northwesterly direction along the front of said blocks 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , and the exterior lines of said quarter-block districts as shown by said map are on two of the opposite sides thereof parallel to said Oklahoma Avenue, and on the other two opposite sides thereof are at right angles to said Oklahoma Avenue, such quarter-block districts were, under said appraisalment and apportionment, and in the said ordinance levying said assessments, described with reference to the cardinal points of the compass, that is to say, the most northerly quarter-block of each of said blocks was given the designation of "North  $\frac{1}{4}$  Block of Block . . . ." (the number being inserted), and the most easterly quarter-block of each of said blocks was given the designation of "East  $\frac{1}{4}$  Block of Block . . . ." (the number being inserted).

11. On June 1, 1910, an agent of complainants interviewed the City Clerk of Holdenville, one Draper, and on said date examined the records of the proceedings of said Council respecting the improvement of Oklahoma Avenue in said city; that said proceedings disclosed no plat or record thereof dividing complainants' said property into lots and blocks for any purpose, nor any appraisalment nor assessment thereof.



12. After said map marked "Exhibit C" herein had been approved and adopted by the City Council of the City of Holdenville, as hereinbefore set forth, and the said ordinance had been passed, levying the assessments of which the complainants complain, the said original map was included in a transcript of the proceedings of the Mayor and Council of said City of Holdenville touching the work of improvements of said Oklahoma Avenue and other streets, and delivered to the contractor performing the work and by him forwarded to Spitzer, Rorick & Company of Toledo, Ohio, they being the purchasers of the bonds issued by the City to procure the funds to construct said improvements, and who, upon discovering that said map so held by them was the original map, between January 23, 1913, and March 7, 1913, returned the said map to the City Clerk with the affidavits and endorsement of McIntosh Barber Company attached thereto as shown by said Exhibit C. hereto.

13. After the said return of said map to the City Clerk of said City, which return took place after the commencement of this action, the Mayor and Council of said City did adopt a resolution, a copy of which is hereto attached, marked "Exhibit D."

14. That there is no plat or record except the plat, a copy of which is attached hereto as "Exhibit C." and the record of the proceedings of the Mayor and Council adopting such plat, as aforesaid, which shows any subdivision of complainants' said property into blocks numbered 33½, 44½, 52½, 68½ and 78½.

15. Such proceedings were had by the Mayor and Council of the City of Holdenville, touching the making of said work of improvement upon Oklahoma avenue in said City, the cost thereof, the appraisement and apportionment of benefits conferred upon abutting property, as that the Mayor and Council of said City did, upon the return of the report of the Board of Appraisers showing the appraisement and apportionment of benefits to the several lots and tracts of land mentioned and described therein, including said "North ¼ block of Block 78½, East ¼ block of Block 68½, North ¼ block of Block 68½, East ¼ block of Block 52½, North ¼ block of Block 52½, East ¼ block of Block 44½, North ¼ block of Block 44½, East ¼ block of Block 33½, North ¼ block of Block 33½," appoint a time and place for holding a session to hear any complaints or objections that the said complainants or others might make concerning the said appraisement

and apportionment aforesaid as to any such lots and tracts of land, and did give due notice of such session and of the time and place of holding the same, by causing the City Clerk of such City to have such notice published in a newspaper published and of general circulation in said City, and the Mayor and Council of said City did duly hold such session at the time and place so appointed and noticed, and did there and then, to-wit, on the 29th day of July, 1910, by resolution, confirm said report of such appraisement and apportionment as revised and corrected by them.

16. The complainants and each of them did fail to appear at such session to make complaint or objection against such appraisement and apportionment, and did fail and neglect to make complaint or objection to said Mayor and Council at any time against such appraisement and apportionment of benefits to so much of their said tract of land constituting their said right-of-way and station grounds as was included as aforesaid in said quarter-block districts.

17. Complainants did not, nor did either of them, within sixty days after the passage by the Mayor and Council of said City of Holdenville of the ordinance in their bill of complaint herein mentioned, making the assessments of which they complain, a copy of which insofar as the assessments involved in this action are concerned is as alleged in the bill of complaint herein, bring any action or suit to set aside such assessment or to enjoin the levying or collecting of such assessment, or contesting the validity thereof upon any or all of the grounds or for any or all of the reasons, complaints or objections now in their bill of complaint herein set forth. Said ordinance making said final assessment was passed by the said City Council and approved by the Mayor thereof on the 25th day of August, 1910, and published on the third day of September, 1910, and the complainants' bill of complaint herein was not filed and their action herein commenced until, to-wit, the 1st day of November, 1912.

18. The complainants had full knowledge of the commencement, and of the progress and completion of said work of improvement of and along said Oklahoma Avenue.

19. The Mayor and Council of the City of Holdenville did on the 20th day of October, 1910, adopt a certain resolution, to-wit:

“Resolution No. 31.

Providing for the issuance of street improvement

bonds to pay the cost of paving and otherwise improving streets in Street Improvement District No. 1 of the City of Holdenville, Oklahoma,"

in the aggregate amount of Eighty-six thousand, five hundred thirty-two and 05/100 dollars (\$86,532.05); and did issue such series of bonds of the tenor, denomination and numbers and with the interest coupons hereto attached, in accordance with and as provided in said resolution, except that Bond No. 29 for \$650.00 and Bond No. 55 for \$1,000.00 and Bond No. 56 for \$650.00 and Bond No. 65 for \$650.00, were not issued but cancelled, a copy of which resolution is hereto attached, marked "Exhibit E," and made a part of this stipulation.

20. For a valuable consideration and before maturity thereof, the defendants, Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, as Spitzer, Rorick & Company, did purchase and acquire all said series of bonds so issued, and were at the commencement of this action the owners and holders and are now the owners and holders of one of said series of bonds with the coupons thereto attached, to-wit, bond No. 19 in the sum of \$1,000.00 dated the 9th day of September, 1910, due and payable on the 15th day of September, 1912, with interest from date thereof at the rate of six per cent. per annum, evidenced by coupons numbered 1 and 2 thereto attached.

21. For a valuable consideration and before maturity thereof the defendant, Madison G. Baldwin, did purchase and acquire and is now the owner and holder of one of said series of bonds with the coupons thereto attached, to-wit, bond No. 77 in the sum of \$1,000.00, dated September 9, 1910, due and payable on the 15th day of September, 1919, with interest from date thereof at the rate of six per cent. per annum, evidenced by nine coupons numbered 1 to 9 both inclusive to said bond attached.

22. Neither of said bonds numbered respectively 19 and 77, nor any part of the principal thereof, or the interest thereon or any part thereof, has been paid, except that the interest represented by said coupons numbered 1 and 2 on each of said bonds has been paid.

23. The defendants, Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, as Spitzer, Rorick & Company, and Madison G. Baldwin, purchased and paid for said bonds numbered 19 and 77 in reliance upon the resolution, orders, ordinances, maps and proceedings, made, passed and approved by the Mayor and Council of the said City of Holdenville,

and the record thereof as the same appears upon the record of their proceedings, and they relied upon the recitals appearing on the face of said bonds.

24. That on the 16th day of September, 1912, the City Clerk of said City of Holdenville made a certificate to the County Treasurer of Hughes County, Oklahoma, a copy of which in so far as the assessment involved in this action is concerned, is hereto attached and marked "Exhibit F" and made a part hereof. And thereafter the said County Treasurer placed said described property on the delinquent tax list for the current year and advertised the same for sale in the amount of said installment of said assessment as shown by said certificate and penalties provided by law; that the description of the property involved in this action was in said advertisement the same as that shown by said certificate of said City Clerk.

25. That on March 24, 1904, the said Choctaw, Oklahoma & Gulf Railroad Company leased to The Chicago, Rock Island & Pacific Railway Company all its railway lines and appurtenances thereto, including the premises particularly described in the bill of complaint herein, a copy of which said lease is hereto attached, marked "Exhibit G" and made a part hereof.

26. That a certain exhibit marked "A," attached to and made a part of the report of the appraisers mentioned in the bill of complaint, shows the description of each lot, piece or parcel of land and the amount appraised and apportioned against each such lot, piece or parcel of land, and all that portion of such exhibit "A" which gives a list of the lots, pieces and parcels of land fronting or abutting upon said Oklahoma Avenue and the amount of the appraisal and apportionment opposite such lot, piece or parcel of land as confirmed by the Mayor and Council is in the words and figures of the exhibit hereto attached, marked "Exhibit H," and made a part of this stipulation, and is a true and correct statement of so much of said report.

27. That section 1 of the assessing ordinance mentioned in the pleadings herein, omitting all those lots, pieces and parcels of land not fronting or abutting upon said Oklahoma Avenue and the amounts of the assessments against the same, is in the words and figures shown by "Exhibit I" hereto attached and made a part of this stipulation.

28. That the said right-of-way and station grounds, heretofore particularly described, are a part of the lands granted by the Congress of the United States for the purposes and as alleged in the bill of complaint herein and together with the said tracks and facilities located thereon, were at the time of the proceedings by said City Council and for a long time theretofore and ever since have been used as a part of said railway in the conduct of business as a common carrier of both interstate and intrastate commerce, and that a portion of the main track of said railway is upon the property sought to be subjected to the payment of assessments involved in this action.

29. It is agreed that this cause be submitted upon the bill, answers and this stipulation of fact, and such other competent, relevant and material evidence as the parties, or either of them, shall offer not inconsistent therewith.

C. O. BLAKE,

.....

*Attorneys for Complainants.*

.....

J. B. FERRY & E. C. MOTTER,

*Attorneys for Defendants.*

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EXHIBIT A.—Plat of the Town of Holdenville, approved by the Secretary of the Interior November 27, 1901 [omitted from this record by agreement of counsel set forth in subdivision 4 of the "Praecipe and Election as to Printing Record," *infra*].

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EXHIBIT B.—Copy of a plat showing the tracks and other structures and location thereof upon said station grounds and railway yards of complainants abutting on Oklahoma Avenue [reproduced and inserted between pages 78 and 79 of Record].

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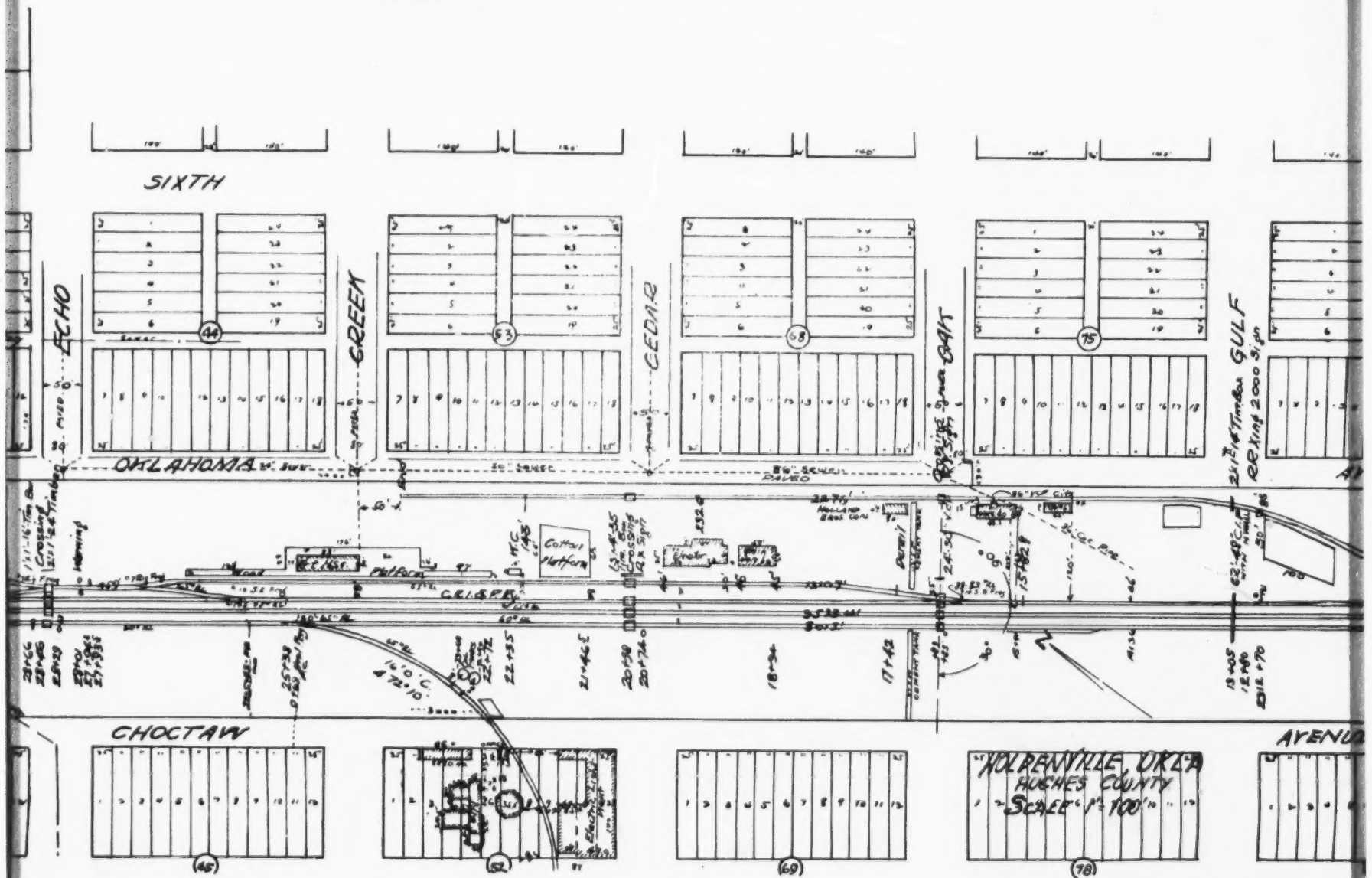
EXHIBIT C.—Map showing certain lands lying between Oklahoma and Choctaw Avenues, not platted into lots and blocks, adopted by the Mayor and Council of Holdenville, June 29, 1910 [reproduced and inserted between pages 78 and 79 of Record].

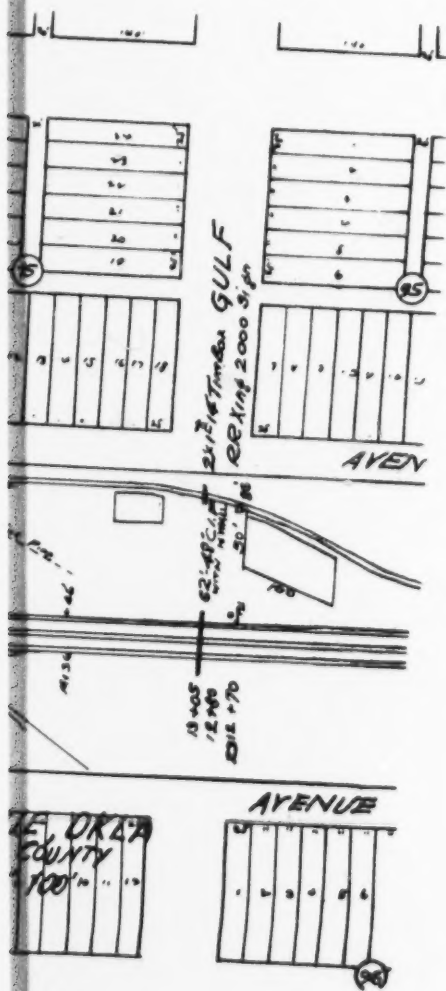
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[illegible]



Exhibit "B".





# PLAT OF PAVING DIST. No. 1.

Adopted June 29, 1910, and filed now for then by  
of City Council, Mch. 7, 1913.

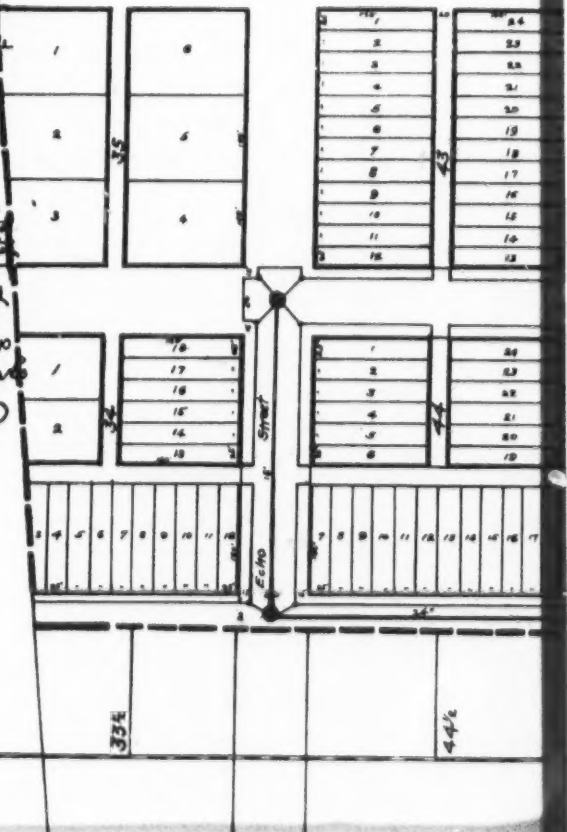
J. D. \_\_\_\_\_  
City

*Exhibit "C."*  
**MAP**  
**Paving District #1**  
**Holdenville,**  
**Okla.**

Scale 1/4" = 100'

1	24
2	25
3	26
4	27
5	28
6	29
7	30
8	31
9	32
10	33
11	34
12	35

*My hereby certify that  
this plat is the original  
plat of paving district  
#1 in the city of Holdenville,  
Okla. as prepared by me  
showing the property of  
the Chicago, Rock Island  
and Pacific Railway  
Company in said city  
divided into quarter  
blocks for the purpose  
of assessing the benefits  
to such property resulting  
from said improvements  
which plat was adopted  
by Council of the city of  
Holdenville, June 29, 1910.  
Phaedrus B. Baskin  
City Engineer*



Street

The map shows a section of land divided into four quadrants by a central vertical street labeled "Main Street" and a horizontal street labeled "Main Street". The lots are numbered 1 through 12 in each quadrant. The map includes dimensions for lot widths and street widths, and a scale bar at the bottom indicating distances of 200, 400, and 600 feet. The map is oriented with North at the top.

Lot	Area	Area	Area	Area
1	2.5	2.5	2.5	2.5
2	2.5	2.5	2.5	2.5
3	2.5	2.5	2.5	2.5
4	2.5	2.5	2.5	2.5
5	2.5	2.5	2.5	2.5
6	2.5	2.5	2.5	2.5
7	2.5	2.5	2.5	2.5
8	2.5	2.5	2.5	2.5
9	2.5	2.5	2.5	2.5
10	2.5	2.5	2.5	2.5
11	2.5	2.5	2.5	2.5
12	2.5	2.5	2.5	2.5

200 400 600

600 700

## "Exhibit D."

## RESOLUTION.

Whereas, at a meeting of the Mayor and Council of the City of Holdenville, Oklahoma, held on the 19th day of June, 1910, as shown by the Clerk's record of the minutes of said City, the said Mayor and Council did adopt a certain map for the purpose of including in proper quarter block districts for the purpose of appraisalment and apportionment of benefits and assessments, a part of the right-of-way and station grounds of The Chicago, Rock Island & Pacific Railway Company within the corporate limits of said City and fronting upon Oklahoma Avenue in Paving District No. 1 therein, and which map did show that portion of said right-of-way and station grounds lying between said Oklahoma Avenue and Choctaw Avenue and extending in a southeasterly direction, the area of intersection of said right-of-way and station grounds with the right-of-way of the St. Louis and San Francisco Railroad Company, to the northwest line of Gulf Street in said City as extended across said right-of-way and station grounds of the said The Chicago, Rock Island & Pacific Railway Company, platted and mapped as blocks 33 $\frac{1}{2}$ , 44 $\frac{1}{2}$ , 52 $\frac{1}{2}$ , 68 $\frac{1}{2}$  and 78 $\frac{1}{2}$ , excluding so much of said right-of-way and station grounds from said blocks as falls within the boundary lines as extended across said right-of-way and station grounds of certain streets in said city, to-wit, Echo Street, Creek Street, Cedar Street and Oak Street; and,

Whereas, said map was thereafter inadvertently included in a transcript of the proceedings of the Mayor and Council of said city touching the making of the improvement in said Paving District No. 1, and forwarded to Messrs. Spitzer, Rorick & Co. of Toledo, Ohio, they being the persons who were furnishing the funds to the contractor to construct said improvement, and who have since returned the said map to the City Clerk of said city with affidavits of identification attached thereto.

Now, Therefore, the City Clerk of said city is hereby directed and ordered to endorse upon said map so adopted, and over his signature as such clerk, the words,

"Adopted by the Mayor and Council on the 29th day of June, 1910, and filed now for then on this 7th day of March, 1913,"

and that he procure at the expense of the city a suitable mapping device to be marked and known as the "Map Record," in which shall be filed and securely fastened all official maps

made under authority of the city, and to file therein the said map so adopted on the said 29th day of June, 1910.

And it is further ordered that the City Clerk make upon the margin of the Journal where this order is entered, a proper cross-reference to the page of the Journal where are entered the minutes of said meeting of June 29th, 1910, adopting said plat, and on the margin of the page of the journal where are entered said minutes of the meeting of June 29th, 1910, a proper cross-reference to the page of the Journal on which this order is to be found, and a farther cross-reference on the margin of the Journal of the minutes of June 29th, 1910, adopting said plat, to the "Map Record" where said map so adopted will be found.

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"Exhibit E."

RESOLUTION NO. 31.

Providing for the Issuance of Street Improvement Bonds to Pay the Cost of Paving and Otherwise Improving Streets in Street Improvement District No. 1, of the City of Holdenville, Oklahoma.

Whereas, in pursuance of proceedings duly had and taken according to law, a contract has been let by the Mayor and Council of the City of Holdenville, Oklahoma, for the improvement of the following named streets and parts of streets in said City, to-wit:

That portion of Oklahoma Avenue beginning at the intersection of the St. Louis and San Francisco Railroad right-of-way and the right-of-way of the Rock Island Railroad right-of-way at the Union Station and extending to the southeast side of Oak Street.

That portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street.

That portion of *Sedar* Street beginning on Oklahoma Avenue and extending to the southwest side of Eighth Street.

That portion of Creek Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street.

The portion of Echo Street beginning on Oklahoma Avenue and extending to the northeast side of Sixth Street.

That portion of Sixth Street beginning on Echo Street and extending to Oak Street.

That portion of Seventh Street beginning on Creek Street and extending to Oak Street.

That portion of Sixth Street beginning at the southeast



side of Oak Street and extending to the northwest side of Gulf Street, constituting Street Improvement District No. 1 of said City, by grading, paving, curbing and draining the same, and

Whereas, the cost of said improvements has been ascertained and the amount thereof has been duly apportioned to and assessed against the several lots and tracts of land liable to be so assessed for said improvements as by law provided; and

Whereas, the amount of such assessments remaining unpaid is ascertained and is hereby determined to be the sum of \$86,532.05, and

Whereas, all legal requirements have been complied with to authorize the issuance of street improvement bonds to pay the cost of said improvements,

Now, Therefore, Be It Resolved by the Mayor and Councilmen of the City of Holdenville, Oklahoma:

Section 1. That, for the purpose of paying the cost of said improvements, there shall be issued a series of Street Improvement Bonds in said amount which shall consist of 80 bonds of \$1,000.00 each, ten bonds of \$650.00 each, and one bond of \$32.05 which shall bear date of September 9, 1910, shall bear interest at the rate of six per cent per annum, payable annually until due and if not paid when due shall bear interest thereafter at the rate of ten per cent per annum until paid, shall be numbered from No. 1 to No. 91, and both principal and interest shall be payable at the Fiscal Agency of the State of Oklahoma in the City of New York.

Section 2. That said series of bonds shall become due and payable as follows:

Nos. 1 to 10,	amount \$8,682.05,	due September 15, 1911
Nos. 11 to 19,	amount \$8,650.00,	due September 15, 1912
Nos. 20 to 28,	amount \$8,650.00,	due September 15, 1913
Nos. 29 to 37,	amount \$8,650.00,	due September 15, 1914
Nos. 38 to 46,	amount \$8,650.00,	due September 15, 1915
Nos. 47 to 55,	amount \$8,650.00,	due September 15, 1916
Nos. 56 to 64,	amount \$8,650.00,	due September 15, 1917
Nos. 65 to 73,	amount \$8,650.00,	due September 15, 1918
Nos. 74 to 82,	amount \$8,650.00,	due September 15, 1919
Nos. 83 to 91,	amount \$8,650.00,	due September 15, 1920

Section 3. That said bonds and coupons shall be executed in the form and shall contain recitals substantially as follows:

United States of America, State of Oklahoma, City of Holdenville.

No. ....

\$.....

### STREET IMPROVEMENT BOND.

Know All Men by These Presents, that the City of Holdenville, in the State of Oklahoma, a city of the first class, for value received hereby acknowledges itself indebted to and promises to pay the bearer the sum of ..... Dollars on the 15th day of September, A. D. 19...., with interest thereon from the date hereof until the principal sum shall be due at the rate of six per cent per annum, payable annually on the 15th day of September of each year, as evidenced by and upon the surrender of the annexed interest coupons as they severally become due; provided that if this bond shall not be paid at maturity, it shall thereafter bear interest at the rate of ten per cent per annum until paid, and both principal and interest are payable in lawful money of the United States of America at the Fiscal Agency of the State of Oklahoma, in the City of New York.

This bond is one of a series of like date and tenor issued by the City of Holdenville under authority of and in full compliance with "An Act to provide for the improvement of streets and other public places within cities of the first class by grading, paving, macadamizing, curbing, guttering and draining the same, and declaring an emergency," approved April 17, 1908, as amended, and in pursuance of resolutions and ordinances of said City duly passed, approved, recorded, authenticated and published, as required by law, for the purpose of procuring the necessary means to pay the cost and expense of improving the following named streets and parts of streets in said city: That portion of Oklahoma Avenue beginning at the intersection of the St. Louis and San Francisco Railroad right of way and the right of way of the Rock Island Railroad right of way at the Union Station and extending to the southeast side of Oak Street; that portion of Oak Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street; that portion of Cedar Avenue beginning on Oklahoma Avenue and extending to the southwest side of Eighth Street; that portion of Creek Street beginning on Oklahoma Avenue and extending to the northeast side of Seventh Street; that portion of Echo Street beginning on Oklahoma Avenue and extending to the northeast side of Sixth Street; that portion of Sixth Street beginning on Echo Street and extending to Oak Street; that portion of Seventh Street beginning on Creek Street and extending to Oak Street; that portion of Sixth Street beginning at the

southeast side of Oak Street and extending to the northwest side of Gulf Street, constituting Street Improvement District No. 1 of said City, and is payable solely from assessments which have been legally levied upon the lots and tracts of land benefited by said improvements, which assessments said City of Holdenville undertakes to collect, as by law provided, and the faith, credit, revenues and property of said City are hereby irrevocably pledged for the purpose of carrying out each and every stipulation contained in this bond.

And it is hereby declared and certified that all acts, conditions and things required to be done and to exist precedent to and in making said improvements and the levying of said assessments and the issuing of this series of bonds have been properly done, happened and performed, and do exist, in regular and due form, time and manner as required by the Constitution and Laws of the State of Oklahoma, and that the total amount of said assessments or any installment thereof, and of the bonds issued on account of said improvements, including this bond, do not exceed any constitutional or statutory limitations.

In Witness Whereof, the City of Holdenville by its Mayor and Council has caused this bond to be signed by its Mayor and attested by its Clerk and its corporate seal to be hereto affixed and the interest coupons hereto attached to be signed by the lithographed signature of its clerk, and this bond to be dated the ninth day of September, 1910.

....., Mayor.

Attest: ..... City Clerk.

# Interest Coupon.

No. .... \$.....

On the 15th day of September, 19.., the City of Holdenville, State of Oklahoma, will pay the bearer ..... Dollars at the Fiscal Agency of the State of Oklahoma in the City of New York, being interest then due on its Street Improvement Bond of Street Improvement District No. 1, dated September 9, 1910, No. ....

....., City Clerk.

Section 4. That said bonds shall be signed by the Mayor and attested by the Clerk of said City and shall have the corporate seal of said City affixed, and that the interest coupons thereto attached shall be signed by the City Clerk, provided that the signature of the Clerk may be lithographed on said coupons, and that the Mayor and Clerk be and they hereby are authorized to prepare and execute said bonds and coupons

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and when so executed and registered by the City Clerk with certificates of such registration endorsed thereon said bonds shall be disposed of as shall be hereafter ordered by this Board.

Adopted Oct. 20, 1910.

Approved Oct. 20, 1910.

(Seal)

F. R. Rutherford,

Mayor.

Attest: I. A. Draper, City Clerk.

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Exhibit "F".

CERTIFICATE OF DELINQUENT PAVING TAX.

State of Oklahoma, County of Hughes—ss.

In the Matter of the Delinquent Assessment Provided for and Levied Against the Property and the Owners Thereof Situated in Street Improvement District Number One (1) of the City of Holdenville, Hughes County, Oklahoma.

To the County Treasurer of Hughes County, State of Oklahoma.

I, J. D. Watts, City Clerk of the City of Holdenville, Hughes County, Oklahoma, in accordance with the provisions of an Act of the Legislature of the State of Oklahoma, entitled "An Act to provide for the Improvement of Streets and other public places within cities of the First Class, by paving, etc.; approved April 17, 1908," and by the further provision under said Act provided for by Ordinance number twenty-seven (27) duly enacted, passed and approved, published by the Mayor and Council of the City of Holdenville aforesaid on the 3rd day of September, 1910, entitled "An Ordinance to assess the cost of Street Improvement District Number One (1) in the City of Holdenville, Okla., etc., Do Hereby certify that I, as City Clerk aforesaid, have given notices advising the owners of the property of affected by the assessment made under said law and ordinance in said District and City, of the date of the payment of the installment due and payable thereon on the 1st day of September, 1912, and that of said assessment and interest due on said 1st day of September, 1912, made and levied against the property in said District, there remains due and unpaid against the following described property in said District, the amount set opposite each item thereof, and that in addition thereto a penalty of 18%.

Description of Lot	Block	Amount Due
East $\frac{1}{4}$ of Block.....	68 $\frac{1}{2}$ .....	\$180.47
North $\frac{1}{4}$ of Block.....	68 $\frac{1}{2}$ .....	180.94
North $\frac{1}{4}$ of Block.....	78 $\frac{1}{2}$ .....	50.19
East $\frac{1}{4}$ block of.....	52 $\frac{1}{2}$ .....	170.70
North $\frac{1}{4}$ block of.....	52 $\frac{1}{2}$ .....	168.24
East $\frac{1}{4}$ block of.....	44 $\frac{1}{2}$ .....	166.78
North $\frac{1}{4}$ block of.....	44 $\frac{1}{2}$ .....	158.70
East $\frac{1}{4}$ block of.....	33 $\frac{1}{2}$ .....	115.16
North $\frac{1}{4}$ block of.....	33 $\frac{1}{2}$ .....	46.58

And that you are directed as Treasurer of said County, to place upon the Delinquent Tax Roll of said County, said amounts hereinbefore set forth, to be collected as provided by law.

Witness my hand as City Clerk of the City of Holdenville, Hughes County, Oklahoma, on this 16th day of September, 1912.

Seal.

J. D. Watts, City Clerk.

Certificate to the County Treasurer of the Delinquent Third Instalment of Assessment Street Improvement of District Number One of the City of Holdenville, Okla.

State of Oklahoma, County of Hughes—ss.

I, the undersigned City Clerk of the City of Holdenville, Oklahoma, do hereby certify to the County Treasurer of Hughes County, State of Oklahoma, in which County said City is located, that the third installment of Assessment, together with the yearly interest upon amounts remaining unpaid, at the rate of interest prescribed by law, from the 1st day of September, 1912, to the 1st day of September, 1913, levied by said City under its Ordinance No. 27 against the lots and tracts of land liable therefor in Street Improvement District Number 1 in said City, was due and payable on the first day of September, 1913.

And I do further certify that so much of said installment of Assessment with the interest computed and added, levied as aforesaid, as is hereinafter stated, and in the respective amounts, and against the respective lots and tracts of land hereinafter stated, designated and tabulated, became delin-

quent for want of payment thereof on the first day of September, 1913, and now remain delinquent.

And I do further certify the same to the County Treasurer, for collection, in the manner prescribed by law, and in the said respective amounts, and against the said respective lots and tracts of land, as shown in the tabulated list hereto attached, consisting of pages 1 to 5 inclusive. The columns of such tabulation headed "Lot" and "Block," give the description of each lot, tract of land, or part of lot, by number of lot and block as the same is designated and shown by the plat of said City, or addition thereto, now on file in the office of the Register of Deeds of said County, and against which said delinquent installment is levied.

And I further certify, that the column headed "Total amount Due," includes the third annual installment with the interest added thereto, on the lots, and tracts of land opposite which the description of the lots and blocks the said amount is set forth.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the said City of Holdenville, Oklahoma, this 15th day of September, 1913.

Interest chargeable at the rate of 18% from Sept. 1, 1913.

(Seal)

Clarence Edge, City Clerk.

Description of Lot or Fraction	Block	Total Am't Due
East $\frac{1}{4}$ Block.....	68 $\frac{1}{2}$ .....	\$ 172.72
North $\frac{1}{4}$ Block.....	68 $\frac{1}{2}$ .....	173.16
North $\frac{1}{4}$ Block.....	78 $\frac{1}{2}$ .....	48.04
East $\frac{1}{4}$ of .....	52 $\frac{1}{2}$ .....	163.37
North $\frac{1}{4}$ of .....	52 $\frac{1}{2}$ .....	161.01
East $\frac{1}{4}$ of .....	44 $\frac{1}{2}$ .....	159.62
North $\frac{1}{4}$ of .....	44 $\frac{1}{2}$ .....	151.88
East $\frac{1}{4}$ of .....	33 $\frac{1}{2}$ .....	110.21
North $\frac{1}{4}$ of .....	33 $\frac{1}{2}$ .....	44.58
	<b>Total</b>	<b>\$1184.59</b>



## Exhibit "G".

CHOCTAW, OKLAHOMA AND GULF  
RAILROAD COMPANY  
to  
THE CHICAGO, ROCK ISLAND AND PACIFIC  
RAILWAY COMPANY.

## L E A S E.

Dated March 24, 1904.—999 Years.

An Indenture, made and entered into this twenty-fourth day of March, in the year of our Lord one thousand nine hundred and four, by and between the Choctaw, Oklahoma and Gulf Railroad Company, hereinafter called the lessor, party of the first part, and The Chicago, Rock Island and Pacific Railway Company, hereinafter called the lessee, party of the second part.

Whereas, the lessor is a corporation organized and existing under the laws of the United States and owns and operates lines of railway in the States of Tennessee and Arkansas and in the Territory of Oklahoma and the Indian Territory; and,

Whereas, the lessee is a consolidated corporation organized and existing under the laws of the State of Illinois and Iowa, and owns and operates lines of railway in said States and in the States of Missouri, Nebraska, Kansas and Colorado, and in the Indian Territory and the Territory of Oklahoma; and,

Whereas, the said lines of railway of the lessor and of the lessee connect at the City of El Reno, Canadian County, Territory of Oklahoma, and are connecting and continuous railways:

Now, Therefore, this Indenture Witnesseth:

First. The lessor, for and in consideration of the covenants and agreements hereinafter contained on the part of the lessee to be observed, kept and performed, has let, leased and demised, and by these presents does let, lease and demise, to the lessee, its successors and assigns, the following lines of railway:

(a) The railway tracks, terminals, property and appurtenances of the lessor in the City of Memphis, Ten-

nessee, together with all ferries, inclines and other facilities for crossing the Mississippi River at said point;

(b) A line of railway extending from a point on the west bank of the Mississippi River at or near Hopefield, Crittenden County, Arkansas, opposite Memphis, Tennessee, by way of Little Rock, Pulaski County, Arkansas, to a point on the boundary line between the Territory of Oklahoma and the State of Texas, at or near Texola, Greer County, Oklahoma;

(c) The leasehold interest now or at any time during the term hereof held by the lessor in and to the railway of the White and Black River Valley Railway Company, extending from (a) Brinkley, Monroe County, Arkansas, to Jacksonport, Jackson County, Arkansas, and (b) from Wiville, Woodruff County, Arkansas, to Gregory, in said County;

(d) A line of railway extending from Little Rock, Pulaski County, Arkansas, to Hot Springs, Garland County, Arkansas, including all right, title and interest now or at any time during the term hereof held by the lessor in and to the use of the railway of the Little Rock, Hot Springs and Western Railroad Company from Little Rock, Pulaski County, Arkansas to Benton, Saline County, Arkansas;

(e) A line of railway extending from Butterfield, Hot Springs County, Arkansas, to Malvern, in said County;

(f) A line of railway extending from Wilburton, Indian Territory, to Haileyville, Indian Territory;

(g) A line of railway extending from Haileyville Junction, Indian Territory, to Ardmore, Indian Territory;

(h) A line of railway extending from Tecumseh Junction, Pottawatomie County, Oklahoma, to Asher, on the Canadian River in said County;

(i) A line of railway extending from Geary, Blaine County, Oklahoma, through Woods County, Oklahoma, to Anthony, Harper County, Kansas;

(j) A line of railway extending from Ingersoll, Woods County, Oklahoma, to Alva, in said County;

And all other lines of railway owned, leased or operated by the lessor at the time of the execution and delivery of this indenture or at any time during the term hereof, including spurs and branches to coal mines, and all right, title and in-

terest now or at any time during the term hereof held by the lessor in and to any other lines of railway in which the lessor, by lease, trackage agreement or operating contract, has any right, title or interest; all rights of way, stations, depot and terminal grounds, and all other lands and interests in land appertaining or to appertain to said lines of railway and each of them; all roadbeds, tracks, sidings, rails, ties, switches, bridges, piers, abutments, trestles, viaducts, culverts, turnouts, turntables, superstructures, fences, stations, warehouses, elevators, water stations, telegraph lines, and all other buildings, erections, fixtures, appliances and facilities, now owned or hereafter to be acquired by the lessor or hereafter added to said railways or any of them; all rolling stock and equipment of every description, including locomotives, cars and vehicles of every kind now owned or possessed, or which may hereafter during the term be acquired by the lessor; all tools, implements and machinery, instruments, furniture, safes, books, accounts and bills receivable, cash on hand, stocks, bonds, maps, field notes, surveys, charts, materials, supplies, personal property and claims or causes of action of every character now or hereafter during the term belonging or accruing to the lessor; together with all and singular the property, rights, privileges, franchises, tenements, hereditaments and appurtenances to the said railways and each of them belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the lessor of in and to the same and every part and parcel thereof, with the appurtenances, whether now held or hereafter acquired;

To Have and To Hold unto the lessee, its successors and assigns, for a term of nine hundred and ninety-nine (999) years beginning on the date hereof;

Subject, however, as to the property embraced therein severally and respectively, to the lien thereon of the following mortgages and equipment trust agreements, to-wit:

1. Choctaw, Oklahoma and Gulf Railroad Company General Mortgage to the Girard Life Insurance, Annuity and Trust Company of Philadelphia as Trustee, dated October 3, 1894, securing an issue now outstanding of \$5,500,000, face value, of five (5) per cent bonds maturing October 1, 1919;

2. Choctaw and Memphis Railroad Company Mortgage to the Girard Life Insurance, Annuity and Trust Company of Philadelphia as Trustee, dated January 2, 1899, securing an

issue now outstanding of \$3,525,000, face value, of five (5) per cent bonds maturing January 1, 1949;

3. Little Rock Bridge Company Mortgage to Girard Trust Company as Trustee, dated June 29, 1899, securing an issue now outstanding of \$355,000, six (6) per cent bonds maturing July 1, 1919;

4. Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage to Girard Trust Company as Trustee, dated May 1, 1902, securing an issue of five (5) per cent bonds maturing May 1, 1952, authorized to be issued in the aggregate sum of \$30,000,000, of which \$5,411,000 are now outstanding;

5. Equipment Trust Agreement or Lease between Girard Trust Company and Choctaw, Oklahoma and Gulf Railroad Company, dated July 1, 1900, securing an issue now outstanding of \$100,000 five (5) per cent equipment trust certificates maturing, \$50,000 October 1, 1904, and \$50,000 October 1, 1905;

6. Equipment Trust Agreement or Lease between Clement B. Newbold, Girard Trust Company and Choctaw, Oklahoma and Gulf Railroad Company dated May 1, 1901, securing an issue now outstanding of \$650,000 of five (5) per cent equipment trust certificates maturing in installments on the first day of February and of August in each year until and including the year 1908;

7. Equipment Trust Agreement or Lease between Edward B. Smith, Girard Trust Company and Choctaw, Oklahoma and Gulf Railroad Company, dated February 24, 1902, securing an issue now outstanding of \$1,540,000 four and one-half ( $4\frac{1}{2}$ ) per cent equipment trust certificates maturing in installments on the first day of April in each year until and including the year 1910.

The lessee, its successors and assigns, yielding and paying therefor the sums hereinafter specified, and keeping and performing all and singular the covenants and agreements hereinafter set forth to be by the lessee observed, kept and performed.

Second. The lessee agrees to account to the lessor for all operations of the demised railways from the day of the date hereof until midnight of March 31, 1904, and does hereby assume the payment of all current and unsecured indebtedness of the lessor as of said March 31, 1904; in consideration thereof, the lessor does hereby irrevocably authorize the lessee throughout the term of this lease to exercise in respect of all stocks and bonds at any time during the term owned by the

lessor all rights, powers and discretions which the lessor as such owner might or could exercise, including the right to sell, pledge or otherwise dispose of the same, and to devote the proceeds thereof to its own use, and to exercise such rights, powers and discretions in the name of the lessor, or in the name of the lessee; the lessor hereby irrevocably constituting the lessee, during the term of this lease, its lawful attorney, with full power of substitution and revocation, in the name and stead of the lessor, to execute and deliver all such instruments, proxies and powers as may, in the judgment of the lessee, be necessary or proper, and the lessor hereby ratifies and confirms all action which the lessee or any substitute may take or cause to be taken by virtue hereof. The lessor does further irrevocably authorize the lessee throughout the term of this lease to collect in the name of the lessor or otherwise and to retain for its own use, the interest on the bonds or other indebtedness from time to time during the term held by the lessor, or to which the lessor may be or during the term become in any manner entitled, and the dividends on all stocks from time to time during the term held by the lessor, or to which the lessor may be in any manner entitled, and the lessor will, at the request of the lessee, collect and forthwith pay over to the lessee all such interest and dividends.

Third. The lessor, reserving to itself all coal mines, coal leases and coal or mineral lands now or at any time during the term held, owned or acquired by the lessor, or in which the lessor has or may have any right, title or interest, covenants to and with the lessee that the same shall be maintained, improved and operated to the extent and in such manner as shall lawfully be required by the lessee, to the end that the business of the lessee as a common carrier may thereby be benefited and enlarged.

Fourth. The lessee, in consideration of the premises, accepts under the provisions hereof the premises and property hereby demised for the term hereby granted, and covenants to and with the lessor to pay yearly and every year during the term hereby granted, by way of rental therefor, the sum of the following amounts:

(a) the sum of one dollar, lawful money of the United States, on the first day of January in each year;

(b) all taxes that may be imposed, assessed or levied upon the lessor or upon the demised premises and property, or any part thereof, or upon the earnings thereof, as the same shall become due and payable;

(c) all rentals or other compensations due or owing

by the lessor under or by virtue of the provisions of any lease, trackage arrangement or operating contract under and by virtue of which the lessor has the right to use the railway, or any part thereof, of any other railway company;

(d) an amount equal to the interest accruing on the said \$5,500,000 five per cent General Mortgage bonds of the lessor, the said \$3,525,000 five per cent bonds of Choctaw and Memphis Railroad Company, the said \$355,000 six per cent bonds of Little Rock Bridge Company, the \$5,411,000 Consolidated Mortgage five per cent bonds of the lessor and all of such Consolidated Mortgage bonds hereafter issued by the lessor at the request or with the consent of the lessee; such payments to be made by payment of said interest as it accrues to the holders of said bonds in accordance with the terms thereof and of the mortgages or deeds of trust securing the same;

(e) an amount equal to the interest on the aforesaid equipment trust certificates of the lessor, such payments to be made as they severally and respectively accrue, to the persons entitled thereto in accordance with the terms of said equipment trust certificates and of the respective agreements securing the same, severally and respectively.

Fifth. The lessee covenants to and with the lessor as follows:

The lessee shall and will save harmless and indemnify the lessor from and against all causes of action, legal or equitable, arising by reason of the acts or neglect of the lessee, or of the failure by the lessee or any of its officers, agents or employes to fulfill any duty toward the lessor or toward the public or any person or persons whomsoever, which the lessor by reason of its ownership or the lessee by reason of its occupancy of the demised premises, or otherwise, may owe; and shall and will at its own cost and expense, defend such actions which may be brought against the lessor, and shall pay all amounts which may be recovered therein against the lessor for or upon the said causes of action.

The lessee will, during the term of this lease, keep and maintain the demised lines of railway of the lessor in good and proper condition for the passage thereover of both freight and passenger traffic, and shall and will keep and maintain in good repair, working order and condition the tracks, depots, terminal facilities and other demised property, using suitable materials for renewal of the same as renewal shall from time to time become necessary.

Sixth. The lessor covenants to and with the lessee as follows:

The lessor shall and will maintain, renew and keep up during the term of this lease its corporate existence and organization so long as permitted by law so to do, and at all times and from time to time during said term, when requested by the lessee, shall and will put forth and exercise each and every corporate power and do each and every corporate act which the lessor now or at any time hereafter may lawfully put in force or exercise, to enable the lessee to enjoy and avail itself of and exercise every right, franchise and privilege hereby granted and the proper operation and management of the demised premises according to the terms of this lease, and shall not and will not commit or omit, or suffer or allow to be committed or omitted, any act whereby its corporate existence or powers may be annulled, abridged or affected.

The lessor shall and will from time to time and at all times hereafter at the request of the lessee, make, execute and deliver at all such other and further instruments and assurances in the law for the better or more particular assuring of the demised premises upon the conditions aforesaid, according to the true intent and meaning of these presents, as by the lessee shall be reasonably advised or required.

Seventh. It is mutually covenanted as follows:

The lessee shall and will, at the determination of this lease, re-deliver and surrender up to the lessor the demised premises and property in good order and condition, ordinary wear and tear excepted, with such additions, alterations and improvements as shall have been made thereto, subject, however, to any then existing encumbrances created by the lessor or by the lessee upon the demised premises or any part thereof, or upon the lessee's interest therein, and upon payment by the lessor to the lessee of the then value, over and above any and all such encumbrances, of all such additions, alterations and improvements, including equipment.

If the lessee shall, at any time or times hereafter during the continuance of this agreement, omit or fail to make the payments hereinabove agreed to be made, or any of them, and such default shall continue for the space of three (3) months, or shall fail punctually and faithfully to observe, keep and perform any other of the covenants and agreements thereof, and such default shall continue for the space of three (3) months after service by the President of the lessor upon the President of the lessee of a written notice specifying such



default and requiring the lessee to remedy the same, then, and in either of such cases, the lessor may at any time, either:

(a) proceed by proper action or actions in the proper courts, either at law or in equity, to enforce performance of such covenants by the lessee or to recover damages for the breach thereof; or

(b) by notice in writing determine this lease, and thereupon enter into and upon the demised property, and shall thenceforth hold, possess and enjoy the same free from any right of the lessee, or its successors or assigns, to use the demised premises for any purposes whatever; and thereupon any right, title and interest of the lessee to the use of the demised premises shall absolutely cease and determine as though this lease had never been made; but the lessor shall, nevertheless, have the right to recover from the lessee any and all amounts which under the terms hereof may be then due and unpaid for the use of the demised premises.

At any sale under foreclosure of this lease and of the rights, privileges and property of the lessee under this lease, in pursuance of any of its provisions, the lessor shall have the right to become the purchaser thereof free and discharged from all equity of redemption on the part of the lessee and from any and all claims of the lessee therein and thereto.

In no event shall the stockholders of the lessee or of the lessor be held to any individual liability as stockholders for any default, damages or other breach of obligation, whether of this lease or of any instrument made in pursuance thereof by either party thereto.

Nothing contained in this indenture shall prevent the consolidation or merger with or sale to the lessee of the railways and property of the lessor or of any other railway company, or any consolidation or merger of the lessee with any other corporation, or any conveyance, mortgage, transfer or lease by the lessee of its property, including its leasehold interest in the demised premises.

Eighth. Anything to the contrary in this indenture notwithstanding, this lease shall be subject to termination by the lessor or by Central Trust Company of New York, as trustee, or by any successor trustee, of that certain trust agreement dated May 1, 1902, between the lessee and said Central Trust Company of New York as trustee, securing an issue limited to \$24,000,000 of the Four Per Cent Gold bonds of 1902 of the

lessee, upon the happening of an event of default as defined in section 2, Article Six of said trust agreement dated May 1, 1902.

Anything to the contrary in this indenture notwithstanding, this lease shall be subject to termination by the lessee in case the shares of stock of the lessee held by the Central Trust Company of New York under that certain trust agreement bearing date August 1, 1902, executed to said Trust Company by the Chicago, Rock Island and Pacific Railroad Company shall be sold because of any default by the Chicago, Rock Island and Pacific Railroad Company under said trust agreement dated August 1, 1902.

Ninth. Nothing in this indenture expressed or implied is intended or shall be construed to confer or to give to any person or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this indenture, or of any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in this indenture contained shall be for the sole and exclusive benefit of the parties hereto.

The provisions of this Ninth Article shall not, however, be construed so as to limit or in anywise affect the rights in and by the Eighth Article of this indenture, given to Central Trust Company of New York, as trustee, or any successor trustee under the trust agreement between the lessee and said Central Trust Company of New York, dated May 1, 1902.

Tenth. All the covenants, stipulations and agreements in this indenture shall extend to and bind the successors and assigns of the parties respectively, by and to whom the same have been made.

In Witness Whereof, each of the parties hereto has caused its corporate seal to be hereunto affixed and this lease to be signed by its president or vice-president, and its secretary or assistant secretary, the day and year first above written.

Choctaw, Oklahoma and Gulf Railroad Company,  
(Corporate Seal)

By C. H. Warren  
Vice-President.

Attest:

Geo. H. Crosby, Secretary.

The Chicago, Rock Island and Pacific Railway  
Company,

(Corporate Seal)

By Robt Mather  
Vice-President.

Attest:

G. T. Boggs, Assistant Secretary.

Signed, sealed and delivered by Choctaw, Oklahoma and Gulf Railroad Company in the presence of H. J. Renn, E. Christiansen.

Signed, sealed and delivered by The Chicago, Rock Island and Pacific Railway Company in the presence of J. J. Quinlan, Fredk. Flynn.

State of Illinois, County of Cook—ss.

On this 24th day of March, A. D. 1904, before me, the undersigned, a notary public in, within and for the county and state aforesaid, personally appeared C. H. Warren, to me well known as the Vice-President of the Choctaw, Oklahoma and Gulf Railroad Company, the within named lessor, a corporation, and George H. Crosby, to me well known as the Secretary of said corporation, with both of whom I am personally acquainted, and whom I know to be the identical persons who subscribed the name of the maker thereof to the foregoing instrument, and each of them upon oath acknowledged himself to be the Vice-President and Secretary, respectively, of said corporation, and they acknowledged to me that they had as such officers and in their said official capacities executed the same as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth, being authorized so to do, by signing the name of said corporation by themselves as such Vice-President and Secretary, respectively, and each of them also acknowledged to me that he executed the same as his free and voluntary act and deed for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal, at office in the City of Chicago, Illinois, this 24th day of March, 1904.

(Notarial Seal)

C. Nyquist,

Notary Public, Cook County, Illinois.

State of New York, County of New York—ss.

On this 25th day of March, A. D. 1904, before me the undersigned, a notary public in, within and for the county and State aforesaid, personally appeared Robt. Mather, to me well known as the Vice-President of The Chicago, Rock Island and Pacific Railway Company, the within-named lessee, a corporation, and G. T. Boggs, to me well known as the Assistant Secretary of said corporation, with both of whom I am personally acquainted, and whom I know to be the identical persons who subscribed the name of the maker thereof to the foregoing instrument, and each of them upon oath acknowledged himself

to be the Vice-President and Assistant Secretary, respectively, of said corporation, and they acknowledged to me that they had as such officers and in their said official capacities executed the same as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth, being authorized so to do, by signing the name of said corporation by themselves as such Vice-President and Assistant Secretary, respectively, and each of them also acknowledged to me that he executed the same as his free and voluntary act and deed for the consideration, uses and purposes therein mentioned and set forth.

Witness my hand and official seal, at office in the City of New York, New York, this 25th day of March, 1904.

(Notarial Seal)

Emma Walter

Notary Public, New York County, New York. No. 11.

#### Exhibit "H".

East $\frac{1}{4}$ block of block 68 $\frac{1}{2}$	\$ 1107.18
North $\frac{1}{4}$ block of block 68 $\frac{1}{2}$	1110.01
East $\frac{1}{4}$ block of block 78 $\frac{1}{2}$	307.94
East $\frac{1}{4}$ block of block 52 $\frac{1}{2}$	1047.23
North $\frac{1}{4}$ block of block 52 $\frac{1}{2}$	1032.08
East $\frac{1}{4}$ block of block 44 $\frac{1}{2}$	1023.17
North $\frac{1}{4}$ block of block 44 $\frac{1}{2}$	973.64
East $\frac{1}{4}$ block of block 33 $\frac{1}{2}$	706.48
North $\frac{1}{4}$ block of block 33 $\frac{1}{2}$	285.81

#### Exhibit "I".

Section 1: That a levy be and the same is hereby made a charge, assessment and tax against the following lots and tracts of land benefitted in the City of Holdenville for the grading, paving, curbing, guttering and draining of Street Improvement District Number One the same comprising a portion of the streets as hereinafter set forth: That portion of Oklahoma Avenue from the intersection of the St. Louis and San Francisco Railroad right of way and the right of way of the Rock Island Railroad at the Union Station and extending to the southeast side of Oak Street:

Orig. No. of Town Block	Lot or part of lot	Amount
	e ¼ blk of blk 68½	\$ 1107.18
	n ¼ blk of blk 68½	1110.01
	e ¼ blk of blk 78½	307.94
	east ¼ block of block 52½	1047.23
	north ¼ block of block 52½	1032.08
	east ¼ block of block 44½	1023.17
	north ¼ block of block 44½	973.64
	east ¼ block of block 33½	706.48
	north ¼ block of block 33½	285.81

Endorsed: Filed Apr. 26, 1916, R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 24th day of June, A. D. 1918, the defendants herein filed Statement of the Evidence, which is in words and figures as follows:

**Appellants' Statement of the Evidence and Proceedings Had  
at the Trial of Above Case to Be Embodied  
in Record on Appeal.**

The above cause was submitted to the Court on June 22, 1916, on the complaint, the answers thereto, the agreed statement of facts filed therein, elsewhere called stipulation, and the oral testimony submitted by complainants and defendants, which oral testimony was as follows:

J. G. GAMBLE, a witness for complainants, testified as follows:

"My name is J. G. Gamble. Was employed by the Chicago, Rock Island & Pacific Railway Company as attorney during 1911. Under the direction of Mr. Blake I went to Holdenville during 1911 or 1912 and made an investigation with reference to the paving of Oklahoma Avenue. I was directed to go to Holdenville and ascertain whether in the description of the property assessed the land occupied by the Railway Company was included. I do not recall the date when I first went to Holdenville, but was there on two or three occasions. I saw the mayor, whose name was Singleton; I saw the city clerk and the city engineer, whose names I have forgotten, and I saw Mr. I. A. Draper, who was at one time city

clerk of the city of Holdenville. I found on the minutes of the proceedings of the city council at Holdenville, under date of June 29, 1910, a record of the motion concerning the adoption of a certain plat. I afterwards drew the bill in this case and it contained an accurate copy of that record. I made inquiry of Mr. Singleton, the mayor, for the map or plat referred to and also of the incumbents of the city clerk's office and of the city engineer in his office. In response to the inquiry I was told that neither of them knew where the map was or what it contained or what the descriptions I was inquiring about, being referable to certain half blocks, blocks denominated by number in half numbers that are set out in the stipulations and the bill in this case, as to what they covered. I made this inquiry separately of each of the officers named and I went to Mr. Draper's office. He told me there was a map but where it was or what it contained he did not remember. I made efforts similar and from the sources on, as I say, two or three occasions, and while there made copies of the records of the proceedings of the council which were subsequently incorporated in the pleadings in this case. I went to the office of the Register of Deeds while in Holdenville on one of these occasions, and investigated such plats as were on file in his office and found no plats of the City of Holdenville including any such blocks as are denominated in paragraph 10 of the stipulations. I secured a printed copy of what purported to be a government map attached as Exhibit "A" to the Stipulations which likewise showed no such blocks, and I do not recall what steps I took to ascertain whether there was a recorded plat showing these blocks but I went to all sources I could think and found no plat showing the blocks enumerated as are these and I could not tell from the record of the proceedings of the city council what property was intended to be included in the blocks enumerated as stated in paragraph 10 of the stipulations for the reason that there was no description other than the numerals included as I now remember.

On cross-examination Mr. Gamble testified:

I have been employed by Rock Island since April 1st, 1911. Was not with the Company before that time. Prior to that I practised law at Montgomery, Alabama. Was not with the Rock Island in 1910. I was never at the house of the city clerk of Holdenville, and I never met the city clerk at Holdenville at his house at night or any other time, and I never got a transcript of the proceedings from the city clerk of Holdenville. A representative of the Railway Company, on June 1st, 1910, according to my understanding, obtained a tran-

script of the proceedings of the city council relating to this pavement up to that time. My understanding was that Mr. W. H. Moore in company with his clerk, Mr. Cable, got the transcript from Mr. Draper, the city *attorney*. Mr. Moore at that time was an assistant attorney of the Rock Island under Mr. Blake, their general counsel. I had nothing to do with the proceedings and made no inquiry with reference to them until some time in 1911 or 1912. I am not able to fix the date definitely. The first I had to do with these proceedings was after a communication from Spitzer, Rorick & Company was sent to our office through our real estate and taxation department concerning their claims that the Railway was subject to this assessment. I understood Spitzer, Rorick & Company had bought the bonds. That was my first knowledge of the proceedings when they were called to my attention through the tax department that the Company hadn't paid its assessment.

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F. P. RUTHERFORD testified on behalf of the defendants as follows:

I am the present mayor of the city of Holdenville; was mayor of said city during the years 1910 and up to July 4, 1911. Was mayor of the city of Holdenville during the proceedings for the paving of street improvement district No. 1. I remember about the adoption of a map subdividing the Rock Island right-of-way and station grounds into quarter blocks. I have that map with me. The map is identified and offered and admitted as defendant's Exhibit "A"; that is the map showing the platting of the Railroad right-of-way and station grounds for assessment purposes. The map was adopted on June 29, 1910, and filed with the city clerk. It was filed the night it was adopted; was turned over to his possession and retained like all other documents. By filing I mean it was placed in his care and keeping. There was no file mark of record made on it that I know of. I did not do that personally. I was right in council meeting the night it was adopted and turned over with all other papers.

(Witness' statement that it was filed with the clerk was ordered stricken by the trial judge; remainder of his testimony as to details permitted to remain in the record.)

That map remained in the city clerk's office with the files during the proceedings until after the assessing ordinance was passed in August, I don't know just how much longer after that. I do not know whether that map was on file when the bond resolution was passed on October 20, 1910. I think the



transcript was made up and sent to Spitzer, Rorick & Company before the bond resolution was passed; that is my recollection now. That is my recollection, after the assessing ordinance was passed in August, the 25th of August, I believe. The process of getting our money on the bonds that were issued was as follows: The council passed resolutions authorizing the issuance of certain bonds, directing certain numbers in certain amounts, directing the clerk and myself to sign such bonds and attach copies of the resolution to the bonds and draw on Spitzer, Rorick & Company through the First National Bank there. That was done weekly, i. e., as the work progressed. Our process of sending these bonds and getting the money out of them was to make and send a transcript of the proceedings up to date with certain bonds attached with sight draft attached on Spitzer, Rorick & Company. That was continued right along. My recollection is that when we made our first draft on Spitzer, Rorick & Company we sent a complete transcript of the proceedings with that draft and with certain bonds. I think with that transcript this map (Defendants' Exhibit "A") was sent to Spitzer, Rorick & Company with our first sight draft accompanied by bonds. That would be after the passing of the bond resolution; bonds would not be issued until after the resolution was passed. I remember a representative of the Rock Island Railroad calling on me during the summer of 1910 during the progress of these proceedings on more than one occasion. The Rock Island representative would call in. Once, he and the clerk came into my place of business to see about the assessing ordinance, after the assessing ordinance had been passed, and he was during the summer and fall while we were proceeding with these paving improvements. The records of the city were open to his inspection always. I remember a representative of the Rock Island receiving a copy of the assessment ordinance. I don't remember when it was any more, but it was after the publication. The circumstance that I do remember is that he and Mr. Draper, who was the city clerk, came into my place of business with a copy of the paper which carried this publication of the assessment ordinance and we were discussing it there in my store, and he was rather criticising us for paying too much for the paving. He said he thought it ought to have been done cheaper than that, and that their Rock Island engineer said it could be done for a less price. I don't remember the figures. His conclusion was we were paying too dearly for the paving. He had a copy of the paper containing the assessing ordinance that showed the amount of the assessment against the Rock Island Company. I don't

know who that representative was. I would have said, and was under the impression, it was Mr. Gamble. Mr. Gamble was in there at different times, and I *knew* him in Holdenville several times, possibly after the paving was put down, but I had it in mind that it was Mr. Gamble. He represented himself as an attorney for the Rock Island. A Rock Island engineer was in to see me several times. He was shown a map. I don't know what his name was. We discussed how to get rid of the drainage of the storm sewer and get it under their tracks. We put a storm sewer under their tracks and that was arranged with the engineer. He discussed it with us and was in my place of business more than once to see how we were going to get rid of the storm sewer. I do not remember that he ever made any inquiry whether their property had been assessed for this paving district. I never told any of their representatives that there was no assessment against their property. I never told any of their representatives that there was no map or plat.

On cross examination Mr. Rutherford testified:

We had our contract concerning the indebtedness on account of this paving with the contractor who did the paving. We made the contract with Shelby-Downard Asphalt Company. We paid the Shelby-Downard Asphalt Company by their direction. We took the bonds direct and drew on Spitzer, Rorick & Company. We paid for this paving with the paving bonds. Bonds were made to Shelby-Downard Asphalt Company but the drafts were attached and drawn through their bank and on Spitzer, Rorick & Company. The city clerk made up the transcript of these proceedings referred to by me and sent it away. I don't know to whom Mr. Draper delivered the transcript. When I testified a while ago in substance that it was sent at the time we sent the first draft I thought that was the way it was done. That is the way we did all along. I am not positive as to the exact date when the transcript of the council proceedings was first transmitted to the Shelby-Downard Asphalt Company, nor when it was first transmitted to Spitzer, Rorick & Company. I cannot give the exact date; I did not transmit them personally. I am not just positive that this map was inclosed in the first of the transcripts that were forwarded. This map all the time after it was adopted and before it was forwarded to Spitzer, Rorick & Company was in the city clerk's office. The city engineer had an enlarged map in his office. The transcript was forwarded, I think, after the bond ordinance was passed. The assessing ordinance was passed the 25th of August. The bond ordinance was passed October 20th. This transcript of the

proceedings was forwarded after the bond resolution. That is my impression that they went with the first bonds. Attached to this map (Defendants' Exhibit "A") is an affidavit signed by W. H. Harris. I know of him. This affidavit says: "The map of paving District No. 1 of the City of Holdenville, Oklahoma, hereto attached is identified by me, is the original map of improvement district which came into my hands on or about September 25, 1910." I said before I did not know the date, but my impression was it (the map) went with the first abstract and bonds. I am engaged in the clothing business. The Rock Island attorney called on me and got a copy of this assessing ordinance. I don't remember his name, I was under the impression it was Mr. Gamble. It was some time after it was published. It was published on the 26th of August. I could not say how nearly that date. All I know is it was after it was in the paper because he had a copy of it. I don't know as I would know W. H. Moore, possibly would recognize him. I don't remember who it was that was there; I don't call to mind the name now. As to whoever it was got this copy he came in my place of business and complained to me about the price of the paving. I don't know what he was there for; he had a copy of the paper in his hand and referred to it. I know Mr. Wilhoyt. It was not he. I don't know that I know Mr. Moore; I might. The occasion of this visit by this gentleman saying he was an attorney was not on the 1st day of June, 1910, it was after that date. I do not remember whether or not the city entered into a contract with the Railroad Company concerning the passage of the storm sewer under the tracks. I don't remember about a contract but probably there was one. I don't remember when it was. I do remember it was during the progress of the work. He was there at different times; I don't remember what date. I just remember he was there at the time we were discussing it. Mr. Draper, I think, drew the draft on Spitzer, Rorick & Company. I think Mr. Draper was directed by the council to draw the draft and forward it and forward the bond. C. F. Roberts was the city treasurer at the time. I don't think he drew the draft. I think Mr. Draper drew them.

**Re-direct Examination of Mr. Rutherford:**

I remember Mr. Draper, the city clerk, and I would often go down to the bank together and make these drafts, don't know that we always did but we often did. Mr. Draper would often come into my store after they were issued and we would sign up the drafts with certain bonds attached and certain transcripts.

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I. O. DRAPER testified as a witness on behalf of the defendants as follows:

My name is I. O. Draper. During 1910 and up to July 4, 1911, I was city clerk of the city of Holdenville and as city clerk had in my possession the records of the council proceedings of said city and kept the minutes of the meetings. I have seen the map which has been identified as defendants' Exhibit "A" before. It was adopted June 29, 1910, by the mayor and council. After its adoption it was filed in my office. It remained in my office as city clerk all the time from its adoption until it was given to Gilkerson & Levy to be sent to Spitzer, Rorick & Company. That map was not in a transcript of proceedings that I sent to Spitzer, Rorick & Company. I don't remember just when he did send it to Spitzer, Rorick & Company. I don't remember just how long that map remained in my office. There was a map in the city engineer's office showing this paving district. It was a large map tacked up on the wall over his drafting table. I went over that map with a representative of the Rock Island Railroad; my impression was that it was Mr. Gamble, it might have been \* \* \* they were both in to see me several times. Then I also went over it with an engineer that they sent there. He pretended to represent the Rock Island as one of the assistant attorneys. He was there to obtain information. I went over that map with those people and showed them this paving district several times. I don't remember when this attorney first came and went over the map in the city engineer's office; it was after June 1st, 1910, and before January 1st, 1911. I don't remember how long after June 1st. I never was called on by a representative of the Rock Island for a transcript. Mr. Moore, or some representative called on me about June 1st. Found me at my home. He came down to my home and said the Rock Island Railroad Company understood that we were doing some paving and we talked on the subject. I was under the impression it was Mr. Gamble, or it may have been Mr. Moore. I told him I had a copy of the proceedings at my house and he said he would like to look over them and he said would I have any objections to taking it to his office at El Reno and I said no, but return it to me for it was a copy. That contained the first and second resolutions and advertisements for bids. He took the transcript with him. He called on me at a later date after the assessment ordinance had been passed. We talked about the assessment, went over the records and went over to the print shop and got a paper. I went with this representative of the Rock Island. We got a copy of the paper at the print shop containing the assessing ordinance. We

then went to Mr. Rutherford's store. We talked there and Mr. Rutherford told both of us he thought the paving pretty high; that their engineer said it could be done cheaper. We had a copy of the assessing ordinance before us at that time. I don't remember how long after the ordinance was printed that we had that conversation; it was after it was printed. The representative of the Rock Island called on me several times with reference to these proceedings between June 1st, when I gave him a transcript of the proceedings, and the conference we had at the time we had the printed copy of the assessing ordinance. The local agent was there several times. We talked several times about the outlet for the storm sewer. These proceedings and records as city clerk and these maps were at all times open to inspection to any person that might inquire. I never told the representative of the Rock Island, or anyone else, that their property had not been assessed. I talked over the sub-division of this property with the representative of the Rock Island, the attorney, at the time the mayor, Mr. Rutherford and I were talking at his store. He was the same person who got the transcript from me on June 1st. That transcript was returned to me. I do not have any letter that would refresh my memory concerning it, as to who it was.

On cross examination Mr. Draper testified as follows:

This map (defendants' Exhibit "A") was turned over to Gilkerson & Levy; they were sub-contractors. They forwarded it to Spitzer, Rorick & Co. I did not. I saw it put in the office. I did not include this map in the transcript of the proceedings. It is a mistake when it is stated that this map was included in the transcript that went to Spitzer, Rorick & Co. I prepared that transcript. I do not recall the day I delivered this map to Gilkerson and Levy. I believe I turned it over to Mr. Levy; he is a lawyer in Muskogee. I am sure I didn't turn it over to the First National Bank of Holdenville. I am sure I turned it over to Mr. Levy or Mr. Gilkerson, I don't recall the date. If I remember right, somewhere around September or October; I place it within a month's time. It might have been a month before this. I have nothing to recall it to mind right now to fix any date. Mr. Moore came to my house and got a transcript of the proceedings and returned it to me. Those proceedings showed no adoption of that map. He wrote me a letter when he returned the transcript to me. I got several letters from him, and that same gentleman came to see me again and went with me up to see Mr. Rutherford. We also went up to the city engineer's office and talked over the plat. That plat shows block 64½. The city engineer made it; his

name is McIntosh. He was the city engineer at that time. He lived in Oklahoma City. He had a special contract with the city of Holdenville. We had no city engineer that resided in the city of Holdenville. There was a change in the city engineer's place under the commission form of government; that commission form started July 4, 1912. I don't know that Mr. McIntosh was city engineer up to July 4, 1912; I don't remember when they paid him off but he was engineer for all this paving proposition. He left Holdenville after the paving was over. He did not take his map along with him. I have that map in my real estate office. The large map wasn't the one the council adopted; it was the same as the one adopted; it was a larger map. It was the original map that was adopted. I didn't record this map anywhere nor mark it filed. I sent the original map away. I had a small copy made by McIntosh at the same time the original was made, after the adoption of the map. So far as I know it was not marked with any identification as being the map adopted on June 29th. None of them were. The station agent called on me concerning this map, Smith, I believe, is his name. It wasn't Mr. Wilhoit; I know Mr. Wilhoit. The station agent's name was F. A. Smith. I don't remember just what time he saw me, he called on me several times. I did not state to him on some date between July 2nd and July 11th that there had been no additional proceedings or ordinances in the matter of this paving since the transcript was furnished to Mr. Moore for his files. I don't remember that Mr. Smith exhibited to me a copy of a letter from Mr. Moore, the attorney. I don't remember what he did say when he came there; he was there several times about several propositions. He was up there several times during the progress of this paving. I cannot fix the date any more definite than that. It was the attorney who came to see me. He said he lived at El Reno and he is the one that got the transcript and sent it back.

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T. E. ARNOLD testified on behalf of defendants as follows:

My name is T. E. Arnold. I live in Holdenville. I was one of the appraisers that appraised the cost of the improvement for improvement district number one at Holdenville. I have heretofore seen the map which has been marked for identification Defendants' Exhibit "A". We had that map before us when the appraisers apportioned the costs of the improvements to the property in that improvement district. We used this map. Mr. Draper, the city clerk, furnished us



that map. He gave us a copy of the resolution appointing the appraisers at the same time and we worked from those papers.

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Mr. DRAPER was recalled and on examination by the Court testified as follows:

Several times this representative of the Company called on me during the summer. It was the same man all the time. Mr. Gamble called on me several times. During the summer of 1910 it was the same man; I thought it was Mr. Gamble, but in view of Mr. Gamble's testimony I now think it was someone else. At any rate it was the same man that called on me, and this man who called on me about the 10th of June was the same man that called thereafter.

Judge, you asked me a while ago if I remembered correctly. I won't say now that Mr. Moore is the man that was there in Mr. Rutherford's store after the assessing ordinance was passed. At different times there were different employees of the road coming there talking to me. I knew their names at that time. I didn't say sure it was Mr. Moore that looked over the map with me. Mr. Gamble was down there several times the next year in 1912. I remember seeing him there and talking over this matter. I want to say this, that while the map was in the engineer's office, was on the wall, after the paving was over I took it up to my office, the big plat; that was the engineer's private plat. I left the city clerk's office July 4, 1911. The big map was there up to that time. That was the wall map."

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Defendants' Exhibit "A", marked for identification and offered in evidence, shows the platting of the Railroad right-of-way and station grounds into quarter blocks for assessment purposes, and with the endorsements thereon and the affidavits attached thereto is as follows:

(Exhibit "A" is a map of Street Improvement District No. 1, and is the same map marked Exhibit "C" attached to the Stipulations.)

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State of Ohio, Lucas County—ss.

Personally appeared before me a Notary Public in and for Lucas County, Ohio, Grant R. Gibson, who being duly sworn says: I have been in the employment of Spitzer and Co., and its successors, the firm of Spitzer, Rorick & Company



since prior to September 1, 1910, and continuously since that date. As a part of my duties in the employment of said firms I have had continuously since said date and now have charge of the files of said firms in which are kept all papers and transcripts of the records of proceedings evidencing the legality of issues of bonds and other securities purchased by said firms.

I identify the map of Paving District No. 1, of the City of Holdenville, Oklahoma, hereto attached as the original map of said improvement district, which came into the possession of Spitzer and Company on or about September 23, 1910, the same having been received from Messrs. Gilkerson & Levy, general contractors of Muskogee, Oklahoma, who were at that time engaged in the work of making such paving improvements in the said City of Holdenville. Said plat has been continuously in the files of Spitzer and Company and Spitzer, Rorick & Company, except during a short time in September, 1910, when it was in the hands of Mr. W. H. Harris for his examination in passing upon the legality of the paving proceedings and issuance of bonds in payment for said pavement. Said map or plat was returned to Spitzer and Company by W. H. Harris shortly after September 23, 1910, and has been continuously in the files of Spitzer and Company and Spitzer, Rorick & Co., to this date.

(Signed) Grant R. Gibson.

Subscribed and sworn to before me at Toledo, Ohio, this 27th day of January, 1913.

(Seal)

(Signed) James W. Harbaugh,

Notary Public in and for Lucas County, Ohio.

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State of Ohio, Lucas County—ss.

Personally appeared before me a Notary Public in and for Lucas County, Ohio, W. H. Harris, who being duly sworn says: The map of Paving District No. 1 of the City of Holdenville, Oklahoma, hereto attached is identified by me as the original map of said improvement district which came into my hands on or about September 23, 1910, from Spitzer and Company, for my examination in passing upon the legality of the proceedings taken by said City of Holdenville in the making of paving improvements in said District No. 1, and the issuance of Street Improvement Bonds in payment therefor. The figures in pencil on said map on the quarter blocks designated  $33\frac{1}{2}$ ,  $44\frac{1}{2}$ ,  $52\frac{1}{2}$ ,  $68\frac{1}{2}$ ,  $78\frac{1}{2}$ , were made by me when checking the amounts of assessments against said quarter blocks as shown on said map. Said map remained in my pos-

session for several days for the purpose of checking such assessments against the property located in said Improvement District to be assessed for the cost of said paving improvement, and was thereafter returned by me to Spitzer and Company from whom I received it.

(Signed) W. H. Harris.

Subscribed and sworn to before me at Toledo, Ohio, this 28th day of January, 1913.

(Seal)

(Signed) James W. Harbaugh,  
Notary Public in and for Lucas County, Ohio.

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The above and foregoing constitutes all the oral testimony offered or introduced at the trial of said cause by either party hereto.

The foregoing Statement of the Evidence in this case is hereby approved and the clerk of this Court is hereby ordered to file the same and when the same is filed it shall constitute and be a part of the record in this case.

This the 24th day of June, 1918.

RALPH E. CAMPBELL, *Judge*.

Endorsed: Filed Jun. 24, 1918, R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 7th day of February, A. D. 1918, the same being one of the days of the regular January, 1918, term of the United States District Court for the Eastern District of Oklahoma, Court met pursuant to adjournment at Muskogee, Oklahoma. Present and presiding the Honorable RALPH E. CAMPBELL, *Judge*.

Among the proceedings had on this day is the following:

**Decree.**

On the 23rd day of June, 1916, this cause came on to be heard in open court at the City of Muskogee, in the State of Oklahoma, plaintiffs appeared by their attorneys, N. A. Gibson, C. O. Blake, Joseph G. Gamble and K. W. Shartel, and the defendants, B. W. Mackey, as County Treasurer of Hughes County, Oklahoma; the City of Holdenville, a municipal corporation; Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer, partners in trade, doing business under and in the name of Spitzer, Rorick & Company; and

Madison G. Baldwin, appeared by attorneys, Furry & Motter, and announced ready for trial, and the court proceeded to hear the evidence and arguments of counsel, and thereupon, with the consent of all parties plaintiff and defendant, held the said cause for further consideration and decision.

And now on this . . . . . day of January, 1918, the court, having considered the evidence and arguments of counsel and reached a decision in the said cause, announces and submits to counsel for plaintiffs and defendants its written opinion therein as follows, to-wit:

“CAMPBELL, D. J.:

“This case, submitted and briefed some time ago, I have only recently had the time and opportunity to fully consider. After a careful study of the record and a consideration of the arguments, oral and by way of briefs, I conclude that the plaintiffs are entitled to the relief prayed. Under the provisions of the several Acts of Congress constituting the grant of right of way, the railroad company has a mere right of occupancy or easement for railroad purpose, the fee to the land still remaining in the Indian tribes, and subject to revert to them in case of discontinuance of the use. The coal lands, the developments of which was one of the chief objects of this grant of right of way originally, still belong to the Choctaw and Chickasaw tribes, and those tribes are still in existence, as is also the Creek tribe which owns the lands involved as a part of the right of way in this controversy. These coal lands are now being operated under leases made by the tribes under governmental supervision. The railroad company has not been relieved of any of the obligations it assumed with the grant, either as relate to the United States or to the Indian tribes. Whatever may be the power of the state or a subordinate municipality to impose a general tax upon the railway, to enforce the payment of which a lien may be imposed upon its property and franchise, I do not believe that the City of Holdenville was empowered under the paving statutes relied upon to impose upon the portion of the right of way abutting upon Oklahoma Avenue the special paving assessment it seeks to enforce. By the terms of the Enabling Act the state (and consequently all its subordinate divisions or municipalities) is without power to limit or impair the rights of persons or property pertaining to the Indians, so long as such rights shall remain unextinguished, or to limit or affect the authority of the government of the United States to make any law of regula-

tion respecting such Indians, their lands, property or other rights; and that has been held to prohibit the state from passing any act to limit or affect any law or regulation in existence when the Enabling Act was passed. To construe the paving statute relied upon by defendants as empowering the City of Holdenville to subject this portion of the right of way, the title to which, subject to the railroad use or easement, is in the Creek tribe, to forced sale to satisfy a lien for this special paving improvement, would certainly be contrary to the spirit of the Enabling Act, and would put it within the power of the municipality to subvert the governmental plan by which these coal mines are being operated and the coal therefrom carried to market, in that to permit the sale of a segregated segment of the right of way, however, small, of necessity destroys the efficacy of the railroad, the agency through which Congress intended to carry out its purposes. At any rate these considerations afford grave doubt of the city's power to subject this property to the paving lien, which doubt must therefore be resolved against the power. *M., K. & T. R. Co. v. City of Tulsa*, 145 Pac. 400.

"Plaintiff's counsel may draft decree, presenting the same to defendant's counsel for O. K. as to form, and, if so approved, may then be presented for the court's signing and entry. If counsel disagree as to the form of the decree, the court on application will set a day certain for presentation of the matter."

And now the court, being sufficiently advised in the premises and in accordance with said opinion, does find for the plaintiffs, that the plaintiffs are entitled to the free use and possession of the property and premises described in their Bill of Complaint herein, to-wit: the right of way and station grounds of the said plaintiffs at Holdenville, Oklahoma, for railway purposes, and their title thereto and therefor should be and is confirmed, and the pretended assessment described in said Bill of Particulars is found, adjudged and decreed to be void and of no effect as against them; and the said defendants, B. W. Mackey, as County Treasurer of Hughes County, Oklahoma; the City of Holdenville, a municipal corporation; Ceilan M. Spitzer, Adelbert L. Spitzer, Horton C. Rorick and Carl B. Spitzer, partners in trade, doing business under and in the name of Spitzer, Rorick & Company; and Madison G. Baldwin, and each of them, and the representatives, successors in interest and in office of each and all of said defendants, their agents, and all persons acting for, through, by or under them, or either of them, or by

their authority, be and are enjoined and commanded to refrain from in any manner setting up or asserting as against the said plaintiffs, or either of them, or the successor or successors or assigns of the said plaintiffs, or either of them, any right, interest or authority in or pertaining to the said described premises by virtue of the pretended assessment set out in said Bill of Complaint and from taking any action to enforce the payment of the said assessment or any installment or part thereof, or interest or penalties thereon.

That plaintiffs have and recover of the defendants above-named their costs herein, taxed at and found to be the sum of

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And hereof let process issue.

To all of which findings, conclusions and decree, the said defendants, and each of them, at the time excepted and now except.

RALPH E. CAMPBELL, *District Judge.*

O.K. as to form:

C. O. BLAKE, *Atty. for Plaintiff;*

FURRY & MOTTER, *Attys. for Defendants.*

Endorsed: Filed Feb. 7, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 1st day of June, A. D. 1918, the defendants filed their Petition for Allowance of Appeal, together with their Assignments of Errors, which appeal was allowed by the Court. Said Petition for Allowance of Appeal, Assignment of Errors and Order Allowing Appeal are in words and figures as follows:

**Petition for Allowance of Appeal.**

To the Honorable RALPH E. CAMPBELL, Judge of the Above Named Court:

The above named defendants feeling themselves aggrieved by the decree made and entered in this cause on the 7th day of February, 1918, do hereby in open Court appeal from said decree and order to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and pray that their appeal be allowed, and that the transcript of the record, proceedings and papers on which said decree and order were based, duly authenticated, may be sent to the United States

Circuit Court of Appeals for the Eighth Circuit, and that an order be made fixing the amount of securing which defendants shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by the United States Circuit Court of Appeals for the Eighth Circuit.

J. B. FURRY,

E. C. MOTTER,

*Attorneys for defendants.*

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The above and foregoing petition for appeal is granted and the appeal therein prayed for to the United States Circuit Court of Appeals for the Eighth Circuit is this day allowed in open Court, and ordered that the bond on appeal be and is hereby fixed at the sum of \$250.00, the same to act as a cost bond for costs and damages on appeal.

Done this 1st day of June, 1918.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Jun. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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### **Assignments of Error.**

Come now the defendants in the above entitled cause by their attorneys of record, and file herein the following assignments of error upon which they will rely as grounds of reversal in their appeal from the orders and decree of this Court entered herein on the 7th day of February, 1918.

#### **First.**

The Court erred in finding for the plaintiffs and against the defendants on the issues in said cause.

#### **Second.**

The Court erred in holding that the assessments described in plaintiffs' Bill of Particulars, which had been levied and assessed by The City of Holdenville against the property of the plaintiffs, are void and of no effect as to the plaintiffs.

#### **Third.**

The Court erred in holding that the defendant, The City of Holdenville, was not empowered under the laws of Okla-

homa relating to the improvement of streets, relied upon by the defendants in this case, to impose upon the portion of the right-of-way and station grounds adjacent to or abutting upon Oklahoma Avenue the special paving assessments for the improvement of Oklahoma Avenue.

#### Fourth.

The Court erred in holding that the interest, right, title or easement of the plaintiffs in and to the right-of-way and station grounds in the City of Holdenville was not subject to assessments for the improvement of Oklahoma Avenue running parallel and adjacent to said right-of-way and station grounds.

#### Fifth.

The Court erred in holding that by reason of plaintiffs being a federal agency and being used as an instrument by the government in developing the coal lands of the Indian Tribes, and engaged in interstate commerce, the right, title and interest of the plaintiffs in the right-of-way and station grounds at Holdenville, adjacent to Oklahoma Avenue, were not subject to special assessments for the improvement of Oklahoma Avenue.

#### Sixth.

The Court erred in not finding and holding that the plaintiffs under the admitted and undisputed facts in this case were guilty of such laches as to now estop plaintiffs from questioning the validity of the assessments levied on plaintiffs' property by the City of Holdenville for the improvement of Oklahoma Avenue.

#### Seventh.

The Court erred in failing to find and hold that the defendants, Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners doing business as Spitzer, Rorick & Company, and Madison G. Baldwin, are innocent purchasers for value of the bonds issued by The City of Holdenville for the improvement of Oklahoma Avenue, and that the plaintiffs are estopped as against said bondholders from questioning the validity of the assessments levied for the purpose of paying said bonds.

#### Eighth.

The Court erred in not holding that the cause of action of the plaintiffs against the defendants, if any cause of action plaintiffs ever had in the premises, was barred by the statute of limitations, as contained in the stipulations filed



herein and in the statutes of Oklahoma relating to the improvement of streets.

*Wherefore*, these defendants pray that said decree be reversed and that the Circuit Court of Appeals for the Eighth Circuit render a decree and final judgment dismissing plaintiffs' bill.

J. B. FURRY.

E. C. MOTTER,

*Attorneys for defendants.*

Endorsed: Filed Jun. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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### **Bond on Appeal.**

Know All Men by These Presents:

That we, B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, The City of Holdenville, a municipal corporation, Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners as Spitzer, Rorick & Company, and Madison G. Baldwin, as principals, and American Bonding and Casualty Company, Sioux City, Iowa, as surety, are held and firmly bound unto the Choctaw, Oklahoma & Gulf Railroad Company and The Chicago, Rock Island & Pacific Railway Company, in the full and just sum of Two Hundred & Fifty (\$250.00) Dollars, to be paid to the said Choctaw, Oklahoma & Gulf Railroad Company, and The Chicago, Rock Island & Pacific Railway Company, their successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of June, 1918.

*Whereas*, at the January 1918 term of the District Court of the United States for the Eastern District of Oklahoma, in a suit pending in said Court between The Choctaw, Oklahoma & Gulf Railroad Company and The Chicago, Rock Island & Pacific Railway Company, plaintiffs, and B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, The City of Holdenville, a municipal corporation, and Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners doing business as Spitzer, Rorick & Company, and Madison G. Baldwin, defendants, a decree was rendered against said defendants, and the said defendants have obtained an appeal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse said decree in the aforesaid suit and a cita-

tion directed to the said Choctaw, Oklahoma & Gulf Railroad Company and The Chicago, Rock Island & Pacific Railway Company citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Paul, Minnesota, sixty (60) days from and after the date of said citation;

Now the condition of the above obligation is such that if the said appellants shall prosecute said appeal to effect and answer to all damages and costs, if they fail to make good their plea the above obligation to be void; otherwise to be and remain in full force and effect.

B. W. MACKEY,

as County Treasurer of  
Hughes County, Okla.

THE CITY OF HOLDENVILLE,

MADISON G. BALDWIN,

SPITZER, RORICK & COMPANY,

By J. B. FURRY, their Attorney,

*Principals.*

AMERICAN BONDING AND CASUALTY COMPANY,

(Seal)

By W. F. MOFFATT, Attorney-in-fact.

*Surety.*

The above bond approved this June 1, 1918.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Jun. 1, 1918, R. P. HARRISON, Clerk U. S. District Court, Eastern District of Oklahoma.

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#### Citation.

The United States of America to the Choctaw, Oklahoma & Gulf Railroad Company, a Corporation, and to the Chicago, Rock Island & Pacific Railway Company, a Corporation, Greeting:

You and each of you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty (60) days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office in the District Court of the United States for the Eastern District of Oklahoma, wherein B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, The City of Holdenville, a municipal corporation, and Horton C. Rorick, Adelbert

L. Spitzer and Carl B. Spitzer, partners in trade, doing business under the firm name and style of Spitzer, Rorick & Company, and Madison G. Baldwin, are appellants, and you are appellees, to show cause, if any there be, why the decree rendered against said appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable RALPH E. CAMPBELL, Judge of the District Court of the United States for the Eastern District of Oklahoma, this 1st day of June, A. D. 1918.

RALPH E. CAMPBELL,  
*Judge of the United States District Court  
for the Eastern District of Oklahoma.*

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Service of the within and foregoing citation acknowledged and accepted this 3 day of June, A. D. 1918.

The Choctaw, Oklahoma & Gulf Railroad Company, & The Chicago, Rock Island & Pacific Railway Company,  
Appellees,

By C. O. BLAKE,  
N. A. GIBSON,  
*Their Attorneys.*

Endorsed: Filed Jun. 24, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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**Praecipe and Election as to Printing Record.**

To the Honorable R. P. Harrison, Clerk of the Above-named Court:

B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, The City of Holdenville, a municipal corporation, and Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners in trade, doing business under the firm name and style of Spitzer, Rorick & Company, and Madison G. Baldwin, appellants herein, hereby elect to have the transcript of the record in the above entitled cause printed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma, and respectfully request that said transcript in this cause be printed as required by law, under this election, and you are requested to make a transcript of the record in the above entitled cause to be printed under the supervision of the Clerk of the United

States District Court of Muskogee, Oklahoma, and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to an appeal allowed in this cause, and to include in said transcript of record the following and no other papers or exhibits:

1. Bill of Complaint filed November 1, 1912.
2. Answer of defendants, B. W. Mackey, County Treasurer, et al., filed March 3, 1913.
3. Answer of defendants, Horton C. Rorick, et al., filed March 3, 1913.
4. Stipulation filed April 26, 1916, also called "Agreed Statement of Facts," and exhibits thereto attached, except Exhibit "A".
5. Statement of evidence admitted and offered at the final trial of said cause on June 22, 1916.
6. Final decree signed and entered February 7, 1918.
7. Petition for appeal, and order allowing same.
8. Assignment of errors.
9. Appeal bond and approval of same.
10. Citation and acceptance of service thereof.
11. Praecipe and election for printing record.
12. Acceptance of service of praecipe and election for printing record.

J. B. FURRY,

E. C. MOTTER,

*Attorneys for B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, The City of Holdenville, a municipal corporation, and Horton C. Rorick, Ad-elbert L. Spitzer and Carl B. Spitzer, partners in trade doing business under the firm name and style of Spitzer, Rorick & Company, and Madison G. Baldwin, Appellants.*

We, the undersigned attorneys for Choctaw, Oklahoma and Gulf Railroad Company, and the Chicago, Rock Island and Pacific Railway Company, hereby acknowledge receipt of the above designation of the parts of the record necessary for the consideration of the errors assigned by defendants and appellants in the above entitled cause, and waive the designation of any further part or parts of the record and agree that the above includes all the portions of such record material

or necessary for the consideration of the errors assigned by said defendants and appellants, and hereby accept service of the same and service of the above election as to printing the record.

Dated this 21 day of June, 1918.

C. O. BLAKE,

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*Attorneys for Plaintiffs.*

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**Clerk's Certificate.**

*United States of America, Eastern District of Oklahoma—ss.*

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *Choctaw, Oklahoma & Gulf Railroad Co., et al., v. B. W. Mackey, et al.*, Eq. No. 1913, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the citation attached hereto and returned herewith is the original citation issued in this cause.

*In Testimony Whereof*, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Muskogee, dated this 16th day of July, A. D. 1918.

R. P. HARRISON, *Clerk*,

(Seal)

By H. E. BOUDINOT, *Deputy*.

And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

*(Appearance of Messrs. Furry & Motter as Counsel for Appellants.)*

United States Circuit Court of Appeals, Eighth Circuit.

No. 5215.

B. W. MACKEY, as County Treasurer of Hughes County, Oklahoma,  
et al., Appellants,

VS.

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY et al.

The Clerk will enter my appearance as Counsel for the Appellants.

J. B. FURRY,  
E. C. MOTTER,  
Muskogee, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul. 25, 1918.

*(Appearance of Mr. James W. Harbaugh as Counsel for Appellants.)*

The Clerk will enter my appearance as Counsel for the Appellants.

JAMES W. HARBAUGH,  
216 Nicholas Bldg., Toledo, Ohio.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 21, 1919.

*(Appearance of Counsel for Appellees.)*

The Clerk will enter my appearance as Counsel for the Appellees.

C. O. BLAKE,  
R. J. ROBERTS,  
W. H. MOORE.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jul. 31, 1918.

*(Order of Submission.)*

December Term, 1918.

Friday, January 10, 1919.

This cause having been called for hearing in its regular order, argument was commenced by Mr. J. B. Furry for appellants, continued by Mr. C. O. Blake for appellees and concluded by Mr. J. B. Furry for appellants.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1919.

No. 5215.

B. W. MACKEY, as County Treasurer of Hughes County, Oklahoma; The City of Holdenville, a Municipal Corporation, and Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, Partners in Trade, Doing Business under the Firm Name and Style of Spitzer, Rorick & Company, and Madison G. Baldwin, Appellants,

vs.

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, a Corporation, and The Chicago, Rock Island & Pacific Railway Company, Appellees.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. J. B. Furry (Mr. E. C. Motter was with him on the brief), for appellants.

Mr. C. O. Blake (Mr. R. J. Roberts and Mr. John E. Du Mars were with him on the brief), for appellees.

Before Hook and Carland, Circuit Judges, and Amidon, District Judge.

Hook, *Circuit Judge*, delivered the opinion of the Court.

This is an appeal from a decree in a suit by the railroad companies enjoining the City of Holdenville, Oklahoma, and the county treasurer from enforcing special assessments against the railroad right of way and station grounds for the improvement of Oklahoma Avenue upon which the right of way and grounds abut. The railroad companies claim the assessments are invalid because (1) of the peculiar character of their interest in the property and of the reversionary estate, and (2) there was not a sufficient identification of the property in the proceedings of the mayor and city council. The first of these contentions assumed three phases. It was urged that the reversionary estate was in the Creek Nation of Indians and held in trust for them by the United States; that the congressional grant of the easement for railroad purposes charged the railroads with certain continuous public duties and services which would be defeated or impaired by the enforcement of the assessments in question, and that the laws of the State of Oklahoma gave no authority to impose



such charges on railroad rights of way. The trial court granted the injunction because of the Indian character of the reversionary estate and the particular purposes for which Congress granted the railroad easement.

The town, now city, of Holdenville was established, surveyed and platted into lots, blocks, streets and alleys under the direction of the Secretary of the Interior and according to the provisions of the Original Creek Agreement. The lands included were exempted from allotment. The railroad right of way through the town, with enlarged width for station grounds, comprised a tract 300 feet wide and 3000 feet long. It was embraced within the corporate limits of the town and was flanked on both sides by public streets, Oklahoma Avenue, improved as above stated, being one of them. Other platted streets touched the grounds at right angles on both sides. In time, passenger and freight stations, elevators, warehouses, etc., were built on the grounds, and access to them necessarily required the constant use of the contiguous streets. The easement of the Choctaw, Oklahoma & Gulf Railroad Company, one of the plaintiffs, was granted in perpetuity, and with the consent of Congress it leased its railroad and appurtenances, including the grounds in question here, to its co-plaintiff, the Chicago, Rock Island & Pacific Railway Company, for 999 years. The latter company is operating the leased railroad as one of the main lines of its interstate system. We think the case should be regarded as though the right of way and grounds were of the customary character unaffected by the Indian reversion. The estate of the Indians is too remote for practical consideration, and if the assent of the Government as trustee or guardian that the property should bear burdens as similar railroad property elsewhere were necessary it might reasonably be inferred from the circumstances above recited. The special assessments in question are not occupation taxes nor imposed upon the operations of the railroad companies as governmental agencies and have no close touch or relation to the Indian interest as was the case in *Choctaw, O. & G. R. Co. v. Harrison*, 235 U. S. 292. The special assessments are against the railroad property which for tax purposes may be regarded as wholly owned by the companies. It is suggested that the enforcement of the assessments might disable them from performing their duties to the Government and the Indians. But if it is their duty to pay and to save the property from tax sale and dismemberment they can not well plead their own default. It is settled that a railroad right of way is subject to general taxation, even one granted by Congress over an Indian reservation, *Maricopa & Phoenix R. Co. v. Arizona Territory*, 156 U. S. 347, and there is no such difference in principle between a general tax and a special assessment which proceeds on the theory of a direct and special benefit, that makes for a different conclusion. The general rule, sustained by the weight of authority, is that a railroad right of way, whether owned in fee or held in easement, is real estate, property or ground which may be subjected to assessment for the cost of local improvements. See *Louisville & N. R. Co. v. Barber Asphalt Paving Co.*, 116 Ky. 856, 76 S. W. 1097, affirmed so far as the Constitution of the United States is concerned

in 197 U. S. 430; *Dillon on Munic. Corp.* sec. 1451, (5th Ed. p. 2586). We think that is also the rule in Oklahoma. See *M. K. & T. Ry. Co. v. City of Tulsa*, 45 Okla. 382, 145 Pac. 398, involving a right of way owned in fee but not otherwise different from the one here; also *Oklahoma Railway Co. v. Severns Paving Co.*, — Okla., —, 170 Pac., 216, and *Oklahoma City v. Orthwein*, — C. C. A. —, 258 Fed., 190, recently decided by this court.

Was there a sufficient identification of the property? A state law provides: "If any portion of the property abutting upon such improvement shall not be platted into lots and blocks, the Mayor and Council shall include such property in proper quarter block districts for the purpose of appraisalment and assessment, as herein provided." That was done. The city engineer prepared and submitted to the city council a map in which the railroad right of way and station grounds were divided into quarter block areas by projecting the lines of contiguous streets and block boundaries, and designated them by arbitrary numbers. The map was duly adopted by that body and the designations of the quarter blocks were afterwards followed in making the assessments. The temporary absence of the map from the office of the city clerk did not invalidate that step in the proceedings. The agents of the plaintiffs were fully advised of what was being done and of the progress of the improvement. No question was raised until after the work was complete. The map was inadvertently sent to the bond purchasers but the plaintiffs were not misled or prejudiced.

The decree is reversed and the cause is remanded with direction to dismiss the bill.

Filed October 14, 1919.

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1919, Monday, October 20, 1919.

No. 5215.

B. W. MACKEY, as County Treasurer of Hughes County, Oklahoma; The City of Holdenville, a Municipal Corporation, and Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, Partners in Trade, Doing Business under the Firm Name and Style of Spitzer, Rorick and Company, and Madison G. Baldwin, Appellants,

VS.

THE CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, a Corporation, and The Chicago, Rock Island and Pacific Railway Company.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that B. W. Mackey, as County Treasurer of Hughes County, Oklahoma. The City of Holdenville, a municipal corporation, and Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners in trade, doing business under the firm name and style of Spitzer, Rorick and Company, and Madison G. Baldwin, have and recover against The Choctaw, Oklahoma and Gulf Railroad Company, a corporation, and The Chicago, Rock Island and Pacific Railway Company, the sum of — Dollars for their costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to dismiss the bill of complaint.

October 20, 1919.

*(Petition for Appeal to Supreme Court, U. S.)*

To the Honorable Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

The Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 20th day of October, 1919, do hereby appeal from said

decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and they pray that their appeal be allowed; that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated be sent to the Supreme Court of the United States, sitting at Washington, in the District of Columbia, under the rules of such court in such cases made and provided.

And your petitioners further pray that the proper order relating to the security to be required of them be made.

C. O. BLAKE,

R. J. ROBERTS,

*Attorneys for Appellants, Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Ry. Co.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 9, 1919.

*(Assignment of Errors on Appeal to Supreme Court, U. S.)*

Come now the Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company, appellees in the above entitled cause, and file the following assignment of errors upon which they will rely upon their appeal therein from the decree made by this honorable court on the 20th day of October, 1919.

I.

The Circuit Court of Appeals for the Eighth Circuit had no jurisdiction to render and enter the said decree.

II.

The Circuit Court of Appeals erred in holding that the tract or parcel of complainants' right of way and station grounds described in the bill of complaint, or petition, was not, under the Constitution and laws of the United States, exempt from the pretended assessment and from segregation and sale thereunder separate from the railway franchise.

III.

The Circuit Court of Appeals erred in holding that the complainants' easement of right of way and station grounds, sought to be assessed and sold, was sufficiently identified in the proceedings therefor to afford due process of law, and that the enforcement of the pretended assessment was not, for that reason, repugnant to the Fourteenth Amendment to the Constitution of the United States.

## IV.

The Circuit Court of Appeals erred in holding that the State laws, authorizing assessment for local improvements and sale for nonpayment, authorized special assessment against and the sale of the easement of right of way and station grounds described in the bill of complaint.

Wherefore, the Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company, jointly and severally, pray that said decree be reversed and that the Circuit Court of Appeals for the Eighth Circuit be ordered to enter a decree in accordance with the decision of the Supreme Court of the United States.

C. O. BLAKE,  
R. J. ROBERTS,

*Attorneys for Appellants, Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 9, 1919.

*(Order Allowing Appeal to Supreme Court, U. S., and Fixing Amount of Bond, etc.)*

On motion of C. O. Blake, Esq., solicitor and counsel for the Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company, the appellees in the above entitled cause, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be, and the same is hereby allowed, conditioned upon the filing of a bond as hereinafter provided, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed in the sum of \$500.00, as a bond for costs on appeal, the same to be approved and filed within fifteen days from this date.

Dated this 9th day of December, 1919.

WILLIAM C. HOOK,  
*United States Circuit Judge.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 9, 1919.

*(Bond on Appeal to Supreme Court, U. S.)*

Know all men by these presents, that we, the Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company, as principals, and the American Surety

Company of New York, as surety, are held and firmly bound unto B. W. Mackey, as County Treasurer of Hughes County, Oklahoma; the City of Holdenville, a municipal corporation; Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners in trade, doing business under the firm name and style of Spitzer, Rorick & Company, and Madison G. Baldwin, in the sum of five hundred dollars (\$500.00), lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors and assigns, by these presents.

Sealed with our seals and dated this 16th day of December, 1919.

Whereas the above-named Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company have prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the United States Circuit Court of Appeals for the Eighth Circuit, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

CHOCTAW, OKLAHOMA AND GULF  
RAILROAD COMPANY.

THE CHICAGO, ROCK ISLAND AND  
PACIFIC RAILWAY COMPANY,

*Principals,*

By C. O. BLAKE,

*Their Attorney.*

AMERICAN SURETY COMPANY OF  
NEW YORK,

*Surety.*

By KENNETH C. QUAY,

*Resident Vice President.*

[Seal of American Surety Co.]

Attest:

E. HASSELL,

*Resident Assistant Secretary.*

230,081 A.

The within bond is approved both as to sufficiency and form this 22nd day of December, 1919.

WALTER H. SANBORN,

*United States Circuit Judge.*

(Powers of Attorney attached to Original Bond).

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 22, 1919.

In the United States Circuit Court of Appeals for the Eighth Circuit,

No. 5215. In Equity.

B. W. MACKEY, as County Treasurer of Hughes County, Oklahoma; The City of Holdenville, a Municipal Corporation, and Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, Partners in Trade, Doing Business under the Firm Name and Style of Spitzer, Rorick & Company, and Madison G. Baldwin, Appellants,

VS.

THE CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, a Corporation, and The Chicago, Rock Island and Pacific Railway Company, Appellees.

*Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

To B. W. Mackey, as County Treasurer of Hughes County, Oklahoma; the City of Holdenville, a municipal corporation; Horton C. Rorick, Adelbert L. Spitzer and Carl B. Spitzer, partners in trade, doing business under the firm name and style of Spitzer, Rorick & Company; and Madison G. Baldwin, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within thirty days from and after this date, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the Circuit Court of Appeals for the Eighth Circuit from a final decree signed, filed and entered on the 20th day of October, 1919, in that certain suit in the said Circuit Court of Appeals, appealed from the District Court of the United States for the Eastern District of Oklahoma, being No. 5215, in Equity, wherein you were appellants and the Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company were appellees, to show cause, if any there be, why the decree rendered against the said Choctaw, Oklahoma and Gulf Railroad Company and The Chicago, Rock Island and Pacific Railway Company, mentioned in the said order allowing appeal, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable William C. Hook, United States Circuit Judge for the Eighth Circuit, this 9th day of December, A. D., 1919.

WILLIAM C. HOOK,  
*United States Circuit Judge.*

Service of the foregoing citation on appeal is hereby acknowledged to have been made upon us this 16th day of December, 1919.

J. B. FURRY,  
E. C. MOTTER,  
*Attorneys for Appellant, B. W. Mackey,  
as County Treasurer, etc., et al.*



[Endorsed:] No. 5215 in Eq. Circuit Court of Appeals, Eighth Circuit. B. W. Mackey, et al., Appellants, vs. Choctaw, Oklahoma & Gulf Railroad Company, et al., Appellees. Citation on Appeal to Supreme Court, U. S. Filed Dec. 20, 1919. E. E. Koch, Clerk.

*(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein B. W. Mackey, as County Treasurer of Hughes County, Oklahoma, et al., were Appellants, and The Choctaw, Oklahoma & Gulf Railroad Company, et al., were Appellees, No. 5215, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-fourth day of December, A. D. 1919.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,  
*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

Endorsed on cover: File No. 27,404. U. S. Circuit Court Appeals, 8th Circuit. Term No. 649. The Choctaw, Oklahoma & Gulf Railroad Company and The Chicago, Rock Island & Pacific Railway Company, appellants, vs. B. W. Mackey, as County Treasurer of Hughes County, Oklahoma; The City of Holdenville et al. Filed December 29th, 1919. File No. 27,404.

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